

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

17 CR 227 (VEC)

SALVADOR DIAZ,

Defendant.

Trial

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New York, N.Y.  
February 25, 2019  
10:00 a.m.

Before:

HON. VALERIE E. CAPRONI,

District Judge  
-and a Jury-

APPEARANCES

GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

BY: ELINOR TARLOW

DANIEL NESSIM

REBEKAH DONALESKI

Assistant United States Attorneys

Salvador Diaz, Pro Se Defendant

SUSAN G. KELLMAN

CARLOS SANTIAGO

Standby Attorneys for Pro Se Defendant

Also Present: Madison Dunbar, Paralegal Specialist

U.S. Marshal Nicholas A. Ricigliano

1 (Case called)

2 MS. TARLOW: Good morning, your Honor.

3 Elinor Tarlow for the government. I am joined at  
4 counsel table by Assistant United States Attorney Daniel  
5 Nessim, Rebekah Donaleski; a paralegal in the United States  
6 Attorney's Office, Madison Dunbar; and Inspector Nicholas  
7 Ricigliano with the United States Marshal Service.

8 MS. KELLMAN: Good morning, your Honor.

9 THE COURT: Good morning, everybody.

10 MS. KELLMAN: Good morning, your Honor. Susan Kellman  
11 for Mr. Diaz. I'm joined at counsel table by Carlos Santiago,  
12 who's present, your Honor, as an attorney and a member of the  
13 mentoring program. Mr. Diaz present in court, your Honor, and  
14 we're ready to proceed.

15 THE COURT: Good morning, everyone. Please be seated.  
16 Let me just get signed on.

17 So over the weekend I received a motion from Mr. Diaz.  
18 Ms. Kellman, do you have anything to say? Has your client  
19 decided that he wants to represent himself again?

20 MS. KELLMAN: I don't believe that he does, even  
21 though he's fairly certain that I don't understand the issues  
22 in the case, nor does my colleague who is probably smarter at  
23 this than I am, but I would ask the Court to docket the motion.

24 THE COURT: I think it has been docketed. Has it been  
25 docketed?

1 THE LAW CLERK: Not yet.

2 THE COURT: It will be.

3 Mr. Diaz, let me explain something to you.

4 Mr. Diaz, a counseled defendant cannot make his own  
5 motions. At the final pretrial conference you told me you did  
6 not want to represent yourself, you did not want to be  
7 represented by Mr. DeMarco, so I made efforts to find a new  
8 attorney. I got Ms. Kellman.

9 Now the question is: How do you want to proceed? You  
10 have a constitutional right to be represented by counsel, you  
11 have a constitutional right to represent yourself, but what you  
12 do not have a constitutional right to do is to be wishy-washy,  
13 you can't go back and forth between representing yourself and  
14 being represented by counsel.

15 So what do you want to do?

16 MR. DIAZ: I understand everything you say. And I  
17 actually I'm embarrassed that I've been wishy-washy because I  
18 have been. I think the circumstances have me say that I've  
19 been that way, otherwise I would lose some rights that I'm  
20 allowed under the Constitution because of the representation  
21 that I've been getting.

22 I expressed this items on the motion to my attorneys  
23 several days ago, the very first day we met, and I explained to  
24 them my view and they explained to me their view and they  
25 disagreed what I said, they misinterpreted and they said I

misinterpreted everything. I told them go ahead and submit it anyway, make an entry. Say you disagree with it. I told them that submit my motion anyway, to disassociate -- make a note informing the Court they did not agree with the motion. This is something at my urgence. So they still did not submit it.

I felt the motion is valid. The response they were giving me why it was not valid --

THE COURT: Mr. Diaz, here's the thing. I'm asking you what time it is and you're telling me how to build a clock. The question is, do you want to represent yourself or do you want to be represented by counsel? Ms. Kellman knows her way around a courtroom. She's been trying cases for 30 years. She makes tactical decisions and strategic decisions, that's what happens when you have a lawyer. It doesn't mean you have to agree with all their decisions. At the end of the day, you need to be consulted on them and you need to talk about them.

Now, do you want to represent yourself?

MR. DIAZ: Yes.

THE COURT: All right. Mr. Diaz, we've gone through this before, but I'm going to go through it again.

Are you under the care of a doctor or a psychiatrist at the moment?

MR. DIAZ: Doctor, yes.

THE COURT: For what?

MR. DIAZ: Mostly irregular heartbeat.

1 THE COURT: Are you on medication?

2 MR. DIAZ: Yes.

3 THE COURT: Does that affect your ability to perceive  
4 what's going on around you?

5 MR. DIAZ: No.

6 THE COURT: Have you ever received medical care or  
7 psychiatric care for a mental illness?

8 MR. DIAZ: No.

9 THE COURT: In the past 24 hours, other than your  
10 heart medicine, have you taken any drugs, medicines or pills,  
11 or have you consumed any alcohol?

12 MR. DIAZ: I have taken some other medicine for that,  
13 it's prescribed but it's for minor stuff. One is for high  
14 cholesterol and the other one is for vitamin deficiency.

15 THE COURT: OK. Is your mind clear today?

16 MR. DIAZ: Yes.

17 THE COURT: Do you understand what we're about to go  
18 through, we're about to go through whether you understand what  
19 you're doing?

20 MR. DIAZ: Yes.

21 THE COURT: And you're making the decision to proceed  
22 and represent yourself rather than to be represented by  
23 counsel?

24 MR. DIAZ: I understand.

25 THE COURT: I find that Mr. Diaz is fully competent to

1 waive his right to counsel.

2 Mr. Diaz, you have the right under the Constitution to  
3 have an attorney represent you at trial. Do you understand  
4 that?

5 MR. DIAZ: Yes.

6 THE COURT: You also have a right to represent  
7 yourself in a criminal case, including during the trial. Do  
8 you understand that?

9 MR. DIAZ: Yes.

10 THE COURT: Have you ever attended law school?

11 MR. DIAZ: No.

12 THE COURT: Have you ever studied law?

13 MR. DIAZ: In jail.

14 THE COURT: In jail. OK.

15 Have you ever represented yourself other than the  
16 representation you've provided in this proceeding?

17 MR. DIAZ: Well, other than that, no, I've never been.

18 THE COURT: You have been a defendant in a court  
19 marshal. Have you ever been a defendant in a civilian criminal  
20 trial?

21 MR. DIAZ: No.

22 THE COURT: Did you represent yourself at the court  
23 marshal?

24 MR. DIAZ: No.

25 THE COURT: You had an attorney, right?

1 MR. DIAZ: Yes.

2 THE COURT: Have you ever attended a civilian trial  
3 from beginning to end?

4 MR. DIAZ: No, I have not.

5 THE COURT: Have you ever seen a jury selected in a  
6 civilian criminal trial?

7 MR. DIAZ: Yes.

8 THE COURT: Are you familiar with the Federal Rules of  
9 Evidence?

10 MR. DIAZ: Yes.

11 THE COURT: Are you familiar with the Federal Rules of  
12 Criminal Procedure?

13 MR. DIAZ: Vaguely, but I am in some way, yes.

14 THE COURT: Ms. Kellman and Mr. Santiago are familiar  
15 with both. Ms. Kellman has tried, I'm going to guess well over  
16 100 cases in her career. I don't know about Mr. Santiago, but  
17 to put it mildly, Ms. Kellman is a experienced criminal defense  
18 attorney. Do you understand that?

19 MR. DIAZ: I understand that, yes.

20 THE COURT: During the trial the rules of evidence and  
21 the rules of criminal procedure have to be followed.

22 Do you understand that?

23 MR. DIAZ: Yes.

24 THE COURT: An attorney, by experience and by  
25 education is generally better able to follow and apply the

1 rules than you're going to be.

2 Do you understand that?

3 MR. DIAZ: I agree with it.

4 THE COURT: Because of unfamiliarity with the rules,  
5 you may end up forfeiting arguments that might otherwise have  
6 been helpful to you because you don't raise them in accordance  
7 with the rules and therefore they're precluded. Do you  
8 understand that?

9 MR. DIAZ: I understand.

10 THE COURT: For example, the motion that you made over  
11 the weekend was waived because you failed to make it in time  
12 when you were representing yourself. So I set a deadline for  
13 motions, that deadline was in December, you did not make this  
14 motion, so this motion is out of time. So even if you're right  
15 on the law, you've forfeited the right to make the motion. Do  
16 you understand that?

17 MR. DIAZ: I understand what you're saying.

18 THE COURT: Do you understand that you could have  
19 similar situations during the course of the trial?

20 MR. DIAZ: Yes.

21 THE COURT: You're aware that notwithstanding the fact  
22 that you're now deciding to go back to representing yourself,  
23 we are starting trial today?

24 MR. DIAZ: Yes.

25 THE COURT: Do you understand that the indictment



1 that's lodged against you is going to be tried to a jury and  
2 the jury is going to render a decision on that?

3 MR. DIAZ: Yes.

4 THE COURT: I can safely say that you are well aware  
5 of what you're charged with and what the possible penalties  
6 are.

7 If you represent yourself, I am not going to give you  
8 help on representing yourself. Do you understand that?

9 MR. DIAZ: Very well.

10 THE COURT: The right of self-representation is not a  
11 license to abuse the dignity of the courtroom and it's not a  
12 license not to comply with the relevant rules of procedural and  
13 substantive law.

14 Do you understand that?

15 MR. DIAZ: I understand.

16 THE COURT: The Court may terminate your  
17 self-representation if you deliberately engage in serious and  
18 obstructionist misconduct.

19 Do you understand that?

20 MR. DIAZ: I understand.

21 THE COURT: I can assure you that that will include if  
22 you raise the issues that I have precluded you from raising,  
23 including the underlying fairness or validity of your court  
24 marshal conviction.

25 Do you understand that?

1 MR. DIAZ: I understand.

2 THE COURT: The government has an obligation to prove  
3 you're guilty beyond a reasonable doubt through the use of  
4 admissible evidence.

5 Do you understand that?

6 MR. DIAZ: I understand.

7 THE COURT: You have no obligation to prove that  
8 you're innocent at trial.

9 Do you understand that?

10 MR. DIAZ: I do.

11 THE COURT: You don't have an obligation to put any  
12 evidence in.

13 Do you understand that?

14 MR. DIAZ: I understand.

15 THE COURT: Presumption of innocence allows you to sit  
16 silently and the jury cannot hold that against you.

17 Do you understand that?

18 MR. DIAZ: I do.

19 THE COURT: You have the right to object to the  
20 government's evidence and to cross-examine its witnesses.

21 Do you understand that?

22 MR. DIAZ: I'm sorry, repeat that, please.

23 THE COURT: You have the right to object to the  
24 government's evidence and you have the right to cross-examine  
25 the witnesses that the government calls.

1 MR. DIAZ: I do.

2 THE COURT: Do you understand that?

3 You have the right to call your own witnesses, the  
4 right to offer evidence, and the right to subpoena witnesses to  
5 come to court to testify under oath.

6 Do you understand that?

7 MR. DIAZ: I understand.

8 THE COURT: You have the right to take the stand at  
9 trial and under oath testify on your behalf.

10 Do you understand that?

11 MR. DIAZ: I understand.

12 THE COURT: You're not obligated to do that, but you  
13 can if you wish.

14 Do you understand that?

15 MR. DIAZ: I do.

16 THE COURT: I think we discussed this when you were  
17 representing yourself before. If you decide to do that, what  
18 you need to do is to start each paragraph of your testimony  
19 with a statement, sort of a subject matter of what that  
20 paragraph will be about.

21 Do you understand that? Do you understand that?

22 MR. DIAZ: Yes.

23 THE COURT: If you decide to testify, you're going to  
24 be subject to cross-examination by the government just like any  
25 other witness.

1 Do you understand that?

2 MR. DIAZ: Yes.

3 THE COURT: If you decide that you don't want to  
4 testify as a witness, the right that you have as a criminal  
5 defendant to remain silent may be undermined if you represent  
6 yourself because the jury may draw impressions about you  
7 because of how you chose to conduct the trial.

8 Do you understand that?

9 MR. DIAZ: I understand that.

10 THE COURT: Proceeding pro se may undermine your  
11 ability to establish a defense. Do you understand that?

12 MR. DIAZ: Yes.

13 THE COURT: So, for example, conceivably you could do  
14 things representing yourself that might make it harmless error  
15 that I precluded you from putting in evidence of the underlying  
16 fairness of your court marshal.

17 Do you understand that?

18 MR. DIAZ: Yes.

19 THE COURT: Let me make sure you understand that,  
20 Mr. Diaz, because that's critical. As I understand it, the  
21 reason you are going to trial is to preserve your right to  
22 appeal the decision I made that precluded you from putting in  
23 evidence that would collaterally attack or that would undermine  
24 the validity of your underlying court marshal, correct?

25 MR. DIAZ: That was my initial -- point of view.

1 Since then I had some other issues that I think I can present  
2 as defense, like I said, in those motions.

3 THE COURT: That's great. So that's further  
4 indication. So you now have some theories of a defense?

5 MR. DIAZ: Yes, I do.

6 THE COURT: It is conceivable that if, depending on  
7 what happens during this trial, that you could undermine your  
8 right to appeal wrongful decisions that I make because the  
9 Court of Appeals would say, Yes, Judge Caproni was wrong about  
10 that, but it doesn't matter, because there was so much evidence  
11 of guilt here that her error was harmless?

12 Do you understand that?

13 MR. DIAZ: I do understand that.

14 THE COURT: If Ms. Kellman is representing you, she  
15 has training and education, she has the ability and knowledge  
16 of how to make a record so that she best puts your case in the  
17 best footing possible if, and if and when you lose this case  
18 and you're convicted so that there is the ability to appeal  
19 rulings that I made that she believes and you believe are  
20 erroneous.

21 Do you understand that?

22 MR. DIAZ: I do.

23 THE COURT: Again, as an example, one of the issues  
24 that we're going to talk about this morning is that the  
25 government wants to put in the notification that was provided

1 to you while you were still in custody in the Brigg Leavenworth  
2 to prove that you have knowledge of your obligation to register  
3 and your obligation to keep your registration up to date.

4 One issue that is raised by that is the fact that that  
5 document makes it clear that you were in custody at the time,  
6 that you were in prison. They're arguing to me that it should  
7 come in any way, that the prejudicial impact of that is  
8 minimal. You may want to argue the alternative. Based on the  
9 letter from the government, I understand that the defense is  
10 objecting to that document coming in. If Ms. Kellman is  
11 representing you, she's going to articulate the best argument  
12 possible for why I should not allow the document in. If she's  
13 not representing you, you're on your own to make those  
14 arguments.

15 Do you understand that?

16 MR. DIAZ: I do.

17 THE COURT: They have to be cogent and they have to be  
18 focused on that. I'm not going to allow you to take every  
19 argument down a rathole that has nothing to do with the issue  
20 at hands.

21 Do you understand that?

22 MR. DIAZ: I understand.

23 THE COURT: You're going to have to cross-examine the  
24 government's witnesses.

25 Do you understand that?

1 MR. DIAZ: Yes.

2 THE COURT: Attorneys know how to ask questions on  
3 cross-examination to avoid drawing out information that will  
4 hurt you, and they're in a position to make judgments about  
5 when it's better not to ask a question because the risk that  
6 the answer is going to be detrimental is too high.

7 Do you understand that?

8 MR. DIAZ: I understand.

9 THE COURT: If you ask questions of government  
10 witnesses, you run the risk that the jury may assume you know  
11 and did certain things because of the the types of questions  
12 you're asking.

13 Do you understand that?

14 MR. DIAZ: I understand.

15 THE COURT: If you ask questions of the government's  
16 witness, your lack of experience may result in you asking  
17 questions that bring out testimony that would be harmful to you  
18 and that would not have been brought out by a more adept  
19 questioner.

20 Do you understand that?

21 MR. DIAZ: I understand.

22 THE COURT: If you're convicted at trial, you have the  
23 right to appeal that conviction.

24 Do you understand that?

25 MR. DIAZ: Yes.

1 THE COURT: It is a frequent argument on appeal that  
2 the defendant argues on appeal that the attorney did not  
3 represent them well, that is, they had ineffective assistance  
4 at trial.

5 Do you understand that?

6 MR. DIAZ: Yes.

7 THE COURT: It's not uncommon for those appeals to be  
8 granted. It's not done a lot, but it does happen from time to  
9 time.

10 Do you understand that?

11 MR. DIAZ: Yes.

12 THE COURT: If you represent yourself, you are  
13 forfeiting that argument, even if you are entirely incompetent  
14 in your defense. You cannot appeal on the grounds that you  
15 were incompetent.

16 Do you understand that?

17 MR. DIAZ: I understand that, but the one part I don't  
18 understand and I may -- I don't know if the Court can answer  
19 this is, does that apply to the guidance that the counseling  
20 that I have received up to this point, while I had counsel?

21 THE COURT: I don't understand the question.

22 MR. DIAZ: If I consider that they have been  
23 inefficient during the past three days, can I bring that up in  
24 appeal?

25 THE COURT: Probably not. Because the issue is going



1 to be whether you received competent representation at trial.  
2 I don't want to say never, maybe you could come up with some  
3 argument on appeal that would demonstrate that something done  
4 or not done during the three days that Ms. Kellman represented  
5 you that was so terribly incompetent that it went to the  
6 fundamental fairness of your trial. I can't imagine what that  
7 would be but conceivably.

8 MR. DIAZ: That's exactly my point. As I expressed to  
9 the Court before, I understand everything you have said. I'm  
10 not a lawyer. I'm at a disadvantage here, and a lot of  
11 reasons, when it comes to the technicality of conduct a trial.

12 THE COURT: Yes, you are.

13 MR. DIAZ: I am. I totally understand that, but I'm  
14 here because I am not getting the representation that I think I  
15 deserve now or my lawyers up to now have failed in some things  
16 that I consider essential, I am being forced to represent  
17 myself.

18 THE COURT: Let me make one thing perfectly clear,  
19 Mr. Diaz, you are not being forced to represent yourself.  
20 Quite the contrary. You have competent counsel sitting there.  
21 It is going to be your choice, yes or no, to proceed with  
22 competent counsel or to represent yourself.

23 MR. DIAZ: I understand what you're saying. When I  
24 say "forced," I mean it's the lesser of two evils.

25 THE COURT: I'm trying to explain to you, Mr. Diaz,

1 and let me make this perfectly clear, it is not the lesser of  
2 two evils. You are making a grave mistake to represent  
3 yourself.

4 MR. DIAZ: Very well.

5 THE COURT: Do you wish to represent yourself?

6 MR. DIAZ: Yes.

7 THE COURT: Are there any other questions that the  
8 government would like for me to ask him?

9 MS. TARLOW: No, your Honor.

10 THE COURT: Ms. Kellman, would you and Mr. Santiago  
11 agree to continue as standby counsel?

12 MR. DIAZ: Yes, of course, Judge.

13 MR. SANTIAGO: Yes.

14 THE COURT: Lest there be any confusion, let's swap  
15 places so Mr. Diaz is sitting in lead counsel's position.

16 All right, Mr. Diaz. You're representing yourself.  
17 Before you change places, one other thing that I want to make  
18 perfectly clear to you Mr. Diaz. This is it, unless I pull the  
19 plug on this because you are being disruptive, you are now  
20 representing yourself. Halfway through the trial, you cannot  
21 say I've made a terrible mistake, I want Ms. Kellman to  
22 represent me.

23 Do you understand that?

24 MR. DIAZ: I understand that.

25 THE COURT: This decision is final until there is a

1 verdict.

2 MR. DIAZ: It's my decision.

3 THE COURT: It's your decision, and you're not  
4 changing it again.

5 MR. DIAZ: No, I'm not.

6 THE COURT: That's what I'm stressing. Thank you.  
7 Please change positions.

8 Please be seated, Mr. Diaz.

9 Mr. Diaz has moved to dismiss the indictment for lack  
10 of venue and for failure to state an offense. These motions  
11 are denied. First, Mr. Diaz's motions are untimely. At the  
12 conference on November 20, 2018, I asked Mr. Diaz whether he  
13 had any pretrial motions relating to the recently superseded  
14 indictment. Mr. Diaz said no. That's in the transcript at  
15 page 20 of that conference. I then adjourned trial for three  
16 months to give Mr. Diaz an opportunity to further consider the  
17 issue. I entered an order directing Mr. Diaz to file any  
18 pretrial motions by December 21. That's at Docket 105,  
19 paragraph 6. Mr. Diaz filed no motions until February 23, two  
20 days before trial. Federal Rule of Criminal Procedure 12(c)  
21 requires a party to file motions to dismiss by the deadline set  
22 by the Court, or else those motions are waived (unless the  
23 defendant shows good cause) see *United States v. Crowley*,  
24 236 F.3d, 104 at page 110 (2d Cir. 2000); also, *United States*  
25 *v. Novak*, 443 F.3d, 150 at 161 (2d Cir. 2006). I find no good

1 cause to excuse waiver here, as the arguments that Mr. Diaz  
2 makes were discussed expressly at the November 20 conference.  
3 At that conference, I explained venue to Mr. Diaz and told him  
4 that failure to challenge venue would result in waiver. That's  
5 in the transcript at pages 10 through 13. I also asked the  
6 government at that time to provide authority for prosecuting a  
7 federal sex offender under the interstate commerce theory of  
8 the offense. The government cited a case and Mr. Diaz raised  
9 no objection. Mr. Diaz has no excuse for waiting until the eve  
10 of trial to raise these objections.

11           Additionally, even if these arguments have not been  
12 waived, they are meritless. Section 2250 phrases the "federal  
13 conviction" And "interstate commerce" theories of the offense  
14 in terms of "or" Indicating that the government may proceed  
15 under either one. That makes sense: If an unregistered sex  
16 offender travels in interstate commerce, the government has a  
17 federal interest in prosecuting him, regardless of whether he  
18 is a federal or state sex offender. I'm unaware of a case that  
19 directly addresses this issue, but in *United States v. Van*  
20 *Buren*, a federal sex offenders was prosecuted under the  
21 interstate travel theory; the Second Circuit affirmed the  
22 conviction albeit on other grounds, *Van Buren* is 599 F.3d at  
23 170 (2d Cir. 2010).

24           As to venue, the Second Circuit square held in  
25 *Holcombe* that venue for register in any district in which the

1 defendant begins or ends his interstate travel. Holcombe is  
2 843 F.3d 12 (2d Cir. 2018). Again, this case was brought to  
3 Mr. Diaz's attention months ago in the government's letter  
4 dated November 19, 2018, which appears at docket 99. Mr. Diaz  
5 offers no reason that it should not apply here.

6 For those of these reasons, Mr. Diaz's motions to  
7 dismiss are denied.

8 The next step.

9 MR. DIAZ: May I answer that?

10 THE COURT: Hang on. *Holcombe*, for the record, is 883  
11 F.3d at page 12.

12 What did you say, Mr. Diaz?

13 MR. DIAZ: May I argue on what you just mentioned?

14 THE COURT: No. You submitted your motion and I've  
15 ruled on that. We're not going to argue it.

16 The next step though is the government's request to  
17 introduce Government Exhibit's 2.

18 Mr. Diaz, would you like to be heard on whether  
19 Government Exhibit 2 is admissible?

20 MR. DIAZ: I believe --

21 THE COURT: You need to stand up when you're talking  
22 to me.

23 MS. KELLMAN: Your Honor, just so we can establish a  
24 procedure, is it possible for me to consult with Mr. Diaz prior  
25 to him responding to the Court?

1 THE COURT: Absolutely.

2 Mr. Diaz, would you like to be heard on the request to  
3 introduce -- it's Government Exhibit Government's Exhibit 2,  
4 correct?

5 MS. TARLOW: Yes, your Honor.

6 MR. DIAZ: No, I don't have any objection in the  
7 redacted form as introduced?

8 THE COURT: Are you proposing to introduce it in a  
9 redacted form? They're only redacting, as I recall, your  
10 personal information like social security number and stuff like  
11 that?

12 MS. TARLOW: And the description of the offense, your  
13 Honor.

14 THE COURT: And the description of the offense,  
15 correct. So you have no objection?

16 MR. DIAZ: No objection if the description of the  
17 offense is redacted.

18 THE COURT: Mr. Diaz, the question is, do you have any  
19 objection to the introduction of the document the way the  
20 government has shown you they intend to introduce it?

21 MR. DIAZ: No objection, your Honor.

22 THE COURT: OK. The government can introduce  
23 Government Exhibit 2 redacted as you have shown the defense.

24 Any other matters that need to be discussed before we  
25 get the jury up here?

1 MS. TARLOW: Yes, your Honor. One matter.

2 With respect to the Court's preliminary instructions  
3 to the jury, after we rereviewed the preliminary instructions  
4 in light of the Court's final charge, we would ask that the  
5 third element of the offense be described consistent with how  
6 the statute is phrased in the indictment, namely, that the  
7 defendant failed to register as a sex offender or update his  
8 registration, and therefore, the references to keep "current"  
9 or the word "current" be removed.

10 THE COURT: So it would say, "Third, the government  
11 must prove that Mr. Diaz knowingly failed to register as a sex  
12 offender."

13 MS. TARLOW: Or update his registration.

14 THE COURT: Or update his registration.

15 MS. TARLOW: So on page 1, paragraph 3.

16 THE COURT: My pagination is not the same as yours.  
17 Does the paragraph start third?

18 MS. TARLOW: It starts with in the preliminary  
19 instruction, it starts with, "First, the government must prove  
20 that Mr. Diaz was required by federal law to register as a sex  
21 offender or to keep his registration information updated and  
22 current." We would ask the words "and current" be removed.

23 THE COURT: OK.

24 MS. TARLOW: In the following paragraph and in the  
25 first sentence, the last words "and current" also be removed.

1 Then, as your Honor noted, in the next paragraph that  
2 starts with third, that "and current" be removed at the end of  
3 that first sentence.

4 THE COURT: Any objection to those, Mr. Diaz?

5 MS. TARLOW: Your Honor, there's one final point where  
6 it comes up on up is the following paragraph last sentence it  
7 says, "And to keep his registration information current," and  
8 we would ask that the word current be removed.

9 THE COURT: Or changed to "updated"?

10 MS. TARLOW: Yes, your Honor.

11 THE COURT: Any objections?

12 MR. DIAZ: No, your Honor.

13 THE COURT: Those changes will be made in the  
14 preliminary instruction.

15 MS. TARLOW: Your Honor, one additional point. We  
16 would ask that the Court provide a limiting instruction  
17 regarding that there is a difference between the state  
18 reporting requirements and the federal reporting requirements  
19 under SORNA. As your Honor is aware, an individual is required  
20 to register or update his registration within three business  
21 days. We expect that our first witness and second witness will  
22 testify in a very limited manner that on the state level,  
23 according to documents they reviewing that reporting  
24 environment within ten business days and we are concerned there  
25 may be some confusion with the jury about the difference in



1 those requirements.

2 THE COURT: Why are they testifying about, what the  
3 state requirement is?

4 MS. TARLOW: They're not testifying. There are  
5 documents we are introducing into evidence which discussed the  
6 defendant's reporting requirements, and within that discussion  
7 there is reference to within ten business days.

8 THE COURT: All right. Mr. Diaz, do you have any  
9 objection to a limiting instruction?

10 MR. DIAZ: No objection, your Honor.

11 THE COURT: Do you have any proposed language? Or do  
12 you just want me to tell them that there's a difference between  
13 the Federal Rules and the state laws?

14 MS. TARLOW: Yes, your Honor. that will be fine.

15 THE COURT: And I'll tell them what the Federal Rules  
16 are.

17 Anything else from the government?

18 MS. TARLOW: No, your Honor. Thank you.

19 THE COURT: Who is opening?

20 MR. NESSIM: I am, your Honor.

21 THE COURT: How long is your opening going to be?

22 MR. NESSIM: It should not be more than ten minutes.

23 THE COURT: Mr. Diaz, do you have anything further for  
24 me to discuss before we get the jury out here?

25 MR. DIAZ: Yes, I have an objection.

1 THE COURT: You have to stand up when you're talking  
2 about to me.

3 MR. DIAZ: I do have an objection to Government  
4 Exhibit 35.

5 THE COURT: We'll deal with that when we get to  
6 Exhibit 35. Is that going to be with your first witness?

7 MS. TARLOW: No, your Honor, not the first witness.

8 THE COURT: We've got plenty of time to deal with 35.  
9 Is it going to affect how you open, Mr. Diaz?

10 MR. DIAZ: I'm sorry?

11 THE COURT: Will it affect my ruling on Government  
12 Exhibit 35? Is it going to have any effect on how you open to  
13 the jury?

14 MR. DIAZ: No, it will not, your Honor.

15 THE COURT: Are you going to make an opening  
16 statement?

17 MR. DIAZ: I may, yes, your Honor. I'm not sure right  
18 now, but this is all of a sudden and I'm not prepared at this  
19 moment, so I may, after I consult.

20 THE COURT: Again, Mr. Diaz, that might be a reason  
21 for you to stick with your attorney.

22 MR. DIAZ: I understand that, but I want to proceed  
23 myself.

24 THE COURT: Look, that's your constitutional right.  
25 As I told you, I think at the final conference you're limited

1 to 15 minutes on your opening statement, if you decide to make  
2 an opening statement.

3 MR. DIAZ: Yes.

4 THE COURT: You're not required to. Do you understand  
5 that?

6 Why don't we bring in the jury. We're not going to  
7 get a jury for a few minutes. So hang out, please.

8 (Recess)

9 THE COURT: Please be seated. We should have a jury  
10 soon. Guys, you're going to have to be out of those seats.  
11 Those chairs up against the wall are perfect.

12 Just for the record, Ms. Kellman, you can provide  
13 Mr. Diaz advice, if he wants to listen to you, but when we  
14 actually go to take strikes, only he can come.

15 MS. KELLMAN: OK. Yes, ma'am.

16 THE COURT: Mr. Diaz, let me make a suggestion to you.  
17 You need to keep your voice down. So to the extent you're  
18 trying to have a confidential conversation with your standby  
19 counsel, I can hear it. More importantly, the government  
20 sitting right in front of you can hear it.

21 MR. DIAZ: Yeah, very well. Thank you, your Honor.

22 (A jury was selected)  
23  
24  
25

1 THE COURT: Members of the jury, now that you've been  
2 sworn, I will tell you about your duties as jurors and give you  
3 instructions that will help you understand what will be  
4 presented during trial. At the end of the trial, I'll give you  
5 instructions again. Those instructions will be much more  
6 detailed and will control your deliberations.

7 At the outset, let me impress upon you that you are in  
8 every sense of the word judges, judges without robes, the sole  
9 judges of the facts of this case. I am the judge of the law,  
10 but you are the judges of the facts. It's customary for people  
11 to rise as a judge enters and leaves a courtroom, not  
12 necessarily as a mark of respect for the judge as a person, but  
13 as a mark of respect for the position that he or she occupies.  
14 You will soon become aware that as you enter and leave the  
15 courtroom, the parties and I will be standing as a mark of our  
16 respect for the position that you hold as judges of the facts  
17 of this case.

18 You will determine the facts solely from the evidence  
19 that will be presented during the course of the trial. You  
20 must not infer from any of my questions or rulings on  
21 objections or anything else that I may do during the trial that  
22 I have a view on the credibility of the witnesses or an opinion  
23 about the facts or about how you should decide the case. As  
24 the sole judges of the facts, you will have to determine which  
25 of the witnesses you believe, what portion of their testimony

1 you accept, and what weight you attach to it.

2           It is the duty of the parties to object when the other  
3 side offers testimony or other evidence that the party believes  
4 is not properly admissible. Therefore, you should draw no  
5 inference if a party objects to some evidence, nor should you  
6 draw any inference from my rulings on an objection. If I  
7 sustain an objection, I will not permit the witness to answer,  
8 or if the witness has already answered, I will instruct that  
9 the answer be stricken and that you disregard it. If I  
10 overrule an objection, the witness will be allowed to answer.  
11 You should not give any added weight to the answer to a  
12 question that was objected to and you should not speculate  
13 about what the answer would have been if an objection to a  
14 question is sustained.

15           You will decide the facts from the evidence that will  
16 be presented in court. That evidence will consist of the  
17 testimony of witnesses on both direct and cross-examination,  
18 documents and other things received into evidence as exhibits,  
19 and any facts that the parties agree to or admit or that I may  
20 instruct you to find. There's no magic formula that you should  
21 use to evaluate the evidence.

22           I will, however, give you some general guidelines for  
23 determining the credibility of witnesses at the end of the  
24 case. For now, I will just tell you to bring into this  
25 courtroom all of the experiences and background of your lives.

1 You should not leave your common sense at home. The same types  
2 of judgments which you use every day to make important  
3 decisions in your own life are the judgments that you should  
4 bring to bear on your consideration of the evidence in this  
5 case.

6 I want to take a moment to tell you what is not  
7 evidence in the case. Questions are not evidence. It is only  
8 the witnesses' answers that are evidence. Similarly, arguments  
9 are not evidence. The opening and closing statements are  
10 intended to help you understand the evidence and to reach your  
11 verdict, but they are not themselves evidence. Anything that I  
12 may say concerning the evidence is not evidence. Testimony  
13 that has been stricken or excluded is not evidence, and it may  
14 not be considered by you in rendering your verdict. Finally,  
15 anything that you may have seen or heard outside the courtroom  
16 is not evidence.

17 The defendant Salvador Diaz has chosen to represent  
18 himself during this trial. Mr. Diaz, like every defendant in a  
19 criminal case, has a constitutional right to be represented by  
20 an attorney or to represent himself. Mr. Diaz's decision to  
21 represent himself can have no bearing on your verdict and you  
22 may not draw any inference favorable or unfavorable based on  
23 the fact that he is representing himself.

24 Although Mr. Diaz is representing himself, there will  
25 be attorneys standing by to advise him if he chooses to consult

1 with them. Those attorneys, Susan Kellman and Carlos Santiago,  
2 are referred to as standby counsel. Whether Mr. Diaz chooses  
3 to consult with standby counsel has no bearing on any issue  
4 that you must decide and you must not draw any inference from  
5 Mr. Diaz's decision to consult or not to consult with  
6 Ms. Kellman or Mr. Santiago.

7 Even though Mr. Diaz is representing himself, the same  
8 rules apply to him as apply to attorneys. Questions that he  
9 may ask and arguments that he may make are not evidence. The  
10 only evidence in this case is the sworn testimony that  
11 witnesses provide on the witness stand, the exhibits that are  
12 received into evidence, and any facts that the parties agree to  
13 or admit or that I may instruct you to find.

14 Now I'm now going to tell you a little bit about the  
15 law that you will have to apply to the facts as you find them.  
16 These are only preliminary and summary instructions. They are  
17 designed to help you evaluate the evidence as you see and hear  
18 it in light of what you will be asked to decide after you have  
19 heard all of the evidence. The final instructions that I will  
20 give you at the end of the trial will contain more detail about  
21 the applicable law. To the extent there are any differences  
22 between my preliminary instructions and the final instructions  
23 at the end of the trial, the final instructions will control.

24 The government has charged Mr. Diaz with failing to  
25 register or to update his registration as a sex offender. The

1 government has the burden of proving every element of this  
2 charge beyond a reasonable doubt.

3 In order to sustain its burden, the government must  
4 prove three elements beyond a reasonable doubt. First, the  
5 government must prove that Mr. Diaz was required by federal law  
6 to register as a sex offender or to keep his registration  
7 information updated. Under federal law, an individual is  
8 required to register as a sex offender and to keep his  
9 registration information current if he has previously been  
10 convicted of a sex offense. I will instruct you on the  
11 definition of a sex offense at the conclusion of the trial.

12 Second, the government must prove that Mr. Diaz  
13 traveled in interstate commerce during the time that he was  
14 required to register as a sex offender or to keep his sex  
15 offender registration updated. To travel in interstate  
16 commerce just means to travel from one state to another.

17 Third, the government must prove that Mr. Diaz  
18 knowingly failed to register as a sex offender or to keep his  
19 sex offender information updated. Federal law requires sex  
20 offenders to notify the authorities of any change in residence  
21 within three business days of the change. Thus, the government  
22 must prove that Mr. Diaz changed his residence, and knowing  
23 that he had a duty to notify the authorities of the change,  
24 voluntarily and deliberately failed to do so.

25 In considering whether the government has proven these



elements, you should not concern yourselves with the facts or circumstances underlying Mr. Diaz's alleged prior conviction. You may not consider evidence of Mr. Diaz's alleged prior conviction as evidence that he has a criminal personality or a bad character. You may consider any evidence of a prior conviction only to determine whether Mr. Diaz is required to register as a sex offender and to keep his registration information current and not for any other purpose.

I've only given you a short summary of the elements of the charged crimes. At the conclusion of the trial, I will explain in greater detail what the government must prove in order to satisfy its burden of proof. For now I'll ask you to remember throughout the trial that Mr. Diaz is presumed innocent and the government has the burden of proving guilt beyond a reasonable doubt. The indictment against Mr. Diaz is only an accusation. It is not proof of guilt or anything else. Mr. Diaz starts off with a clean slate and he keeps that clean slate throughout the trial.

Because the burden of proof is on the government, Mr. Diaz does not need to present any evidence in this case if he chooses not to. He could sit in silence throughout all of these proceedings without ever saying a word and you could draw no inference against him. You cannot find Mr. Diaz guilty unless and until you are unanimously convinced beyond a reasonable doubt of his guilt based on the evidence in this

1 case.

2           You have each been given memo books in which you may  
3 take notes. You don't have to take notes, but you can if you  
4 wish. Please be sure that any note-taking does not interfere  
5 with your listening and considering the evidence. Also, if you  
6 do take notes, you must not show them to or discuss them with  
7 any other juror or anyone else either before or during your  
8 deliberations. Any notes you take may be used solely to assist  
9 you and your notes are not a substitute for your recollection  
10 of the evidence. If during your deliberations you have any  
11 question about any of the testimony or just need your  
12 recollection refreshed, you will be permitted to ask that the  
13 official transcript that is being made of these proceedings be  
14 read to you. Leave your northbound notebooks on your seat when  
15 you leave the courtroom. We will safeguard them during the  
16 trial. After the trial has concluded your notes will be  
17 collected and destroyed.

18           Now I need to caution you about certain rules that  
19 govern your conduct as jurors. First, you must keep an open  
20 mind during the trial. The you cannot decide the case based on  
21 little bits and pieces of evidence and it's not fair to the  
22 parties for you to start making up your mind until you've heard  
23 all of the evidence.

24           Along those lines, do not talk to each other or to  
25 anyone else about this case until all of the evidence has been

received, you've been charged on the law and sent to the jury room to deliberate. If you are asked, you may say you are a juror in a criminal case that is expected to last less than one week, but you may not tell anyone anything about the case until you have been discharged from the jury by me.

Do not let anyone talk to you about the case. If someone tries to talk to you, please report it to me immediately through Mr. Pecorino. You should not, however, discuss with your fellow jurors either that fact or any other fact that you feel is necessary to bring to the attention of the Court. Do not talk to any of the parties or the attorneys or any witnesses. By this I mean do not talk at all, even to pass the time of day or to say good morning. The lawyers and the parties know that they are not supposed to speak to you or even acknowledge you with a hello or a good morning outside of the courtroom. So while it may seem odd not to say hello or to acknowledge the parties or the attorneys, if you run into them coming into the courthouse or in the elevator, you will simply be creating an awkward situation for everyone if you speak to them or even acknowledge their presence with a nod or a smile. They know they cannot speak to you even to exchange pleasantries, so don't put them in a position where they seem to snub you because you acknowledged them.

I do not anticipate that there will be any press coverage of this case, but if there is, do not read any news

1 stories or articles or listen to any radio or television  
2 reports about the case or about anyone who has anything to do  
3 with it. Do not do any research or any investigation about the  
4 case on your own. You as jurors must decide this case based  
5 solely on the evidence presented in the courtroom. This means  
6 that during the trial, you must not conduct any independent  
7 research about the case, the matters in the case, the parties  
8 involved, the attorneys or any witnesses. Do not consult  
9 dictionaries or reference material or search the Internet to  
10 obtain information about the case. Do not visit in person or  
11 via the Internet any place you may hear described during the  
12 trial.

13           My direction that you not talk about the case until  
14 you retire to deliberate includes the use of social media or  
15 other technology to communicate with anyone about the case or  
16 even about your experience as a juror, including postings on  
17 Twitter, Facebook, Snapchat, Instagram or YouTube. I've  
18 probably missed some services, maybe even your current  
19 favorite. I have not intentionally done so. Do not  
20 communicate about the case or about your experiences as a juror  
21 through any means until you have completed your deliberation  
22 and have been excused. I stress this at some length because I  
23 know that some people have become so accustomed to posting  
24 everything they do on certain sites that they might do so  
25 without even thinking about it. If you're one of those people,

1 you have to squelch that desire until this case is over. If  
2 you become aware that any other juror is violating this  
3 instruction, you should bring it to my attention through  
4 Mr. Pecorino, but do not make it known to the other jurors.

5 Finally, I would like to summarize the stages of the  
6 trial for you. First, each side may but does not have to make  
7 an opening statement. An opening statement is not evidence.  
8 It's just the outline of what that party intends to prove and  
9 is offered to help you follow the evidence. After opening  
10 statements, the government will present evidence and Mr. Diaz  
11 may cross-examine them. Then, if desired, Mr. Diaz may, but he  
12 does not have to, present evidence and the government may  
13 cross-examine them. After Mr. Diaz has rested, the government  
14 may call additional witnesses to rebut any evidence that  
15 Mr. Diaz has presented.

16 After all of that, the parties will make their closing  
17 arguments to summarize and give their interpretation of the  
18 evidence. Obviously, like opening statements, the closing  
19 arguments are not evidence. After the closing arguments, I  
20 will give you instructions on the law and then you will retire  
21 to deliberate on your verdict. Keep an open mind until I have  
22 instructed you on the law at the end of the day and after you  
23 and your fellow jurors have discussed the evidence.

24 We will generally sit from 9:30 to 5:00. So that we  
25 can start promptly at 9:30 I'm asking you all to get here

between 9 and 9:15. Remember, it always takes a little bit of time to get through security, so allow for a little extra time. We'll have coffee and a light breakfast available for you starting at 9. Let me stress how important it is for you all to arrive on time. I estimate that this trial will last less than a week, but that schedule depends on us staying on time every day. We cannot start unless we have all of the jurors. So please be on time.

We will break for lunch generally between 12:30 and 1 for about an hour and we'll have a ten-minute break in the middle of the morning and in the middle of the afternoon. We will not take any other breaks, so please plan accordingly. This week we will sit Monday through Thursday. I don't think we're going to go beyond that. I think that will be long enough, but if it's not, we'll talk about on Thursday whether or not we're going to sit on Friday or not. I usually don't sit on Friday? It's going to kind of depend on what's going on. Let me stress again, if you're late you will keep all of your fellow jurors, me, and the parties waiting. We cannot start until all of our jurors and the alternates are here. So please be on time.

The parties and I will be here no later than 9:15 so we can avoid keeping you waiting. That said, if there are times that we do keep you in the jury room waiting. Recognize that we're working in the courtroom and we will try to minimize

1 the amount of time that you're waiting for us in the jury room.

2 With that, Mr. Nessim.

3 MR. NESSIM: Good afternoon.

4 In 2014, Salvador Diaz, the defendant, moved from  
5 New York to New Jersey. The defendant knew exactly what he  
6 needed to do to move his life over to his new state. He got a  
7 New Jersey driver's license, he gave his bank his New Jersey  
8 address, he registered to vote in New Jersey.

9 But Salvador Diaz didn't do the one thing he was  
10 required by law to do, the one thing he knew he had to do.  
11 Salvador Diaz did not register as a sex offender in New Jersey.  
12 The defendant Salvador Diaz, that man, was convicted of a sex  
13 offense, and because of that conviction, he is required by law  
14 to register as a sex offender in every state where he lives.  
15 And he must keep his registration up to date. If the defendant  
16 moves to a different state, he must register as a sex offender  
17 in that new state. The defendant knew about these requirements  
18 and he ignored them. That's why we're here, because Salvador  
19 Diaz broke the law when he failed to register as a sex offender  
20 after he moved from New York to New Jersey.

21 Now, this opening statement is our opportunity to give  
22 you a preview of what we expect will happen at this trial. I'm  
23 going to do that in three parts. First, I'll talk about what  
24 the evidence will show; second, I'm going to say a bit about  
25 the charges in this case; and third, I'll describe how we're

1 going to prove beyond a reasonable doubt that the defendant is  
2 guilty.

3           So what will the evidence show? You'll learn that  
4 states like New York and New Jersey compile registration  
5 information from the sex offenders who are living in that  
6 state. The state then makes that information available to the  
7 public. This helps inform the public about sex offenders who  
8 might live in their neighborhoods or work near their schools.  
9 You'll learn that in 2000, the defendant was convicted of a sex  
10 offense. As a result of that conviction, the defendant was  
11 required to register as a sex offender in every state where he  
12 lived, and the defendant was required by law to update his  
13 registration or make a new registration if he moved his  
14 residence.

15           You'll learn that the defendant was informed of these  
16 registration requirements. After his sex offense conviction  
17 and that the defendant even signed forms acknowledging that he  
18 was aware of those requirements. And, after his release from  
19 prison, the defendant actually was registered as a sex offender  
20 in New York. Between 2007 and 2014, the defendant for  
21 approximately seven years, he lived with his mother in an  
22 apartment in upper Manhattan. He signed annual sex offender  
23 registry forms with New York State affirming that his  
24 registration at that address was current and correct.

25           But that all changed in 2014 when the defendant moved



1 with his mother from Manhattan, New York, to Long Branch,  
2 New Jersey. He knew that he was required to update his sex  
3 offender registration, but you'll hear that he did not register  
4 in New Jersey in 2014, or in any other year after that. You  
5 will also learn about all of the steps that the defendant took  
6 to move every other aspect of his life over to New Jersey.  
7 You'll learn that within months of vacating his apartment in  
8 New York, the defendant had already changed his address with  
9 his bank, he got a New Jersey driver's license and registered  
10 his cars in New Jersey. He registered to vote in New Jersey,  
11 but he didn't register as a sex offender in New Jersey.

12 Now, the defendant wasn't on the lease on the  
13 New Jersey apartment with his mother, but he had a key fob to  
14 access the building and he lived there. You'll learn that the  
15 building management began to suspect that the defendant was  
16 living at his mother's apartment building. They told the  
17 defendant that if he wanted to stay there, he would need to be  
18 formally permitted to live at the apartment which would require  
19 a background check.

20 But the evidence will show that the defendant didn't  
21 want that. And after that conversation, the building  
22 management at the New Jersey apartment reviewed surveillance  
23 footage and showed that the defendant had been sneaking into  
24 and out of the building. The management was so sure that the  
25 defendant was living at the building in violation of his

1 mother's lease that the building took preliminary steps to  
2 evict the defendant's mother.

3           So what did the defendant do? He just moved to a  
4 different address in New Jersey with his sister, and month  
5 after month he failed to register as a sex offender. You'll  
6 learn that the defendant's failure to register finally caught  
7 up with him in 2017 when the defendant was arrested by the U.S.  
8 marshals. You will hear this the defendant admitted that he  
9 moved from New York to New Jersey to live with his mother and  
10 then his sister. The defendant told the Deputy U.S. Marshal  
11 who arrested him that he knew he was required to register as a  
12 sex offender but that the last time he had registered was in  
13 2014 in New York.

14           As a result of what I just described, the defendant is  
15 charged with one count of failing to register as a sex offender  
16 under the Sex Offender Registration and Notification Act, which  
17 is sometimes called SORNA. That's what the evidence is going  
18 to show.

19           Now let's talk about how we are going to prove that  
20 the defendant is guilty. The evidence will come in several  
21 forms, including through documents and the testimony of  
22 witnesses. Let's start with the documents. You'll see  
23 documentary evidence like the certified copy of the defendant's  
24 conviction for a sex offense and the forms the defendant signed  
25 acknowledging that he was required to register as a sex

1 offender in any state where he lived. You'll see a sex  
2 offender registration forms that the defendant did submit when  
3 he lived in Manhattan before 2014. You'll also see all of the  
4 documents proving that the defendant moved from New York to  
5 New Jersey in 2014. You'll see the documents showing the  
6 defendant and his mother vacated their Manhattan apartment in  
7 2014, and the lease documents for the apartment in New Jersey.  
8 You'll see the defendant's New Jersey car registration,  
9 driver's license, and voter registration. You'll see that the  
10 defendant updated his address with his bank showing that he  
11 lived first with his mother in New Jersey, then his sister,  
12 also in New Jersey.

13           You'll hear from witnesses at this trial, like the  
14 building managers at the apartments where defendant lived in  
15 New York and New Jersey. You'll hear from a representative of  
16 the State of New Jersey, who will tell you that the defendant  
17 never registered as a sex offender there. Finally, you'll hear  
18 from the Deputy U.S. Marshal what arrested the defendant in  
19 January 2017. She will tell you that the defendant himself  
20 told her that he knew he had to register as a sex offender, he  
21 last registered as a sex offender in 2014 in New York State,  
22 and after he left New York, he lived with his mother and sister  
23 in New Jersey.

24           This evidence will prove beyond a reasonable doubt  
25 that the defendant is guilty of failing to register as a sex

1 offender. This will not be a long trial, but it is an  
2 important trial. It's important to the defendant and it's  
3 important to the government. And it is simple, the defendant  
4 knew he was supposed to register as a sex offender but  
5 intentionally failed to do so.

6 Before I sit down, I'd like to ask you to do three  
7 things throughout this trial. First, pay close attention to  
8 the evidence; second, follow Judge Caproni's instructions on  
9 the law; and third, use your common sense, the same common  
10 sense you use to make decisions in your daily life. If you do  
11 those three things, you will reach the only verdict consistent  
12 with the evidence in this case, that the defendant is guilty.

13 THE COURT: Thank you, Mr. Nessim.

14 Mr. Diaz.

15 MR. DIAZ: Good afternoon, ladies and gentlemen of the  
16 jury, your Honor.

17 Let me tell you a little bit about myself first. My  
18 name is Salvador Diaz. Obviously I'm not an attorney. I chose  
19 to represent myself. I may seem a little nervous, it's because  
20 I am. But I'm going to try to explain to you some of the  
21 issues that I think my situation is.

22 First of all, I'm a 65 year-old native of the  
23 Dominican Republic. I came here in 1970 and throughout the  
24 decade of the 70s I both worked as a tailor in the Garment  
25 District in New York and I completed high school. In 1990, I

1 joined the United States Navy and was -- I joined the United  
2 States Navy in 1980, reaching the rank of chief officer. For  
3 20 years I was a widely recognized as an expert in my field of  
4 electronics and weapons system within the Navy.

5 "Stigma" is defined as a word or disgrace associated  
6 with a particular circumstances, quality or person. Throughout  
7 our history -- the history of our nation, since the beginning  
8 of the history of our nation, we have undergone always been  
9 subjected to some stigma of some type regarding certain actions  
10 of individuals. Sex offense is one of those. Because of that  
11 stigma, it can greatly affect the way that you or a particular  
12 individual can -- it can affect the impartiality of many  
13 individuals. That's exactly why we chose you as a jury. You  
14 went through, you saw a lengthy questionnaire and a lot of  
15 personal questions were asked about you to determine that you  
16 would be capable of reaching a decision without being affected  
17 by the fact that I'm being accused of being a sex offender.  
18 That is exactly what you're expected to do. Excuse me a  
19 minute, let me read this.

20 The burden of proof in this is on the government to  
21 prove that I failed to register as a sex offender. I am  
22 presumed innocent until that the government presents that  
23 evidence. So when you listen to the government's case, it's  
24 going to be important that you pay attention to a few things  
25 that are key in this case. The judge already instructed you to

1 a limited extent as to what the government needs to do so prove  
2 my guilt. That is, they both satisfy the element of the  
3 offense, the elements are the things that the government has to  
4 prove according to the law. So you must pay very close  
5 attention to these elements that they've brought into evidence.  
6 Again, the judge will explain what that means.

7 Also, the government must prove in this case that I am  
8 a sex offender, that I am required to register as a sex  
9 offender, and that I knowingly failed to register. They have  
10 already talked to you about that. We will see what the  
11 evidence produces.

12 That is why it's important that you understand what  
13 knowingly means. Here, the evidence is that mere negligence or  
14 failure to register is not enough to satisfy the evidence. The  
15 government must prove this to you, because you are the trier of  
16 fact beyond a reasonable doubt. You must be convinced that  
17 they have proved the elements of the offense beyond a  
18 reasonable doubt. So, please, pay close attention to the  
19 evidence and I'm sure that you will reach a fair verdict, which  
20 is what the United States of America guarantees, a fair trial.  
21 So keep that in mind, please.

22 I thank you now.

23 THE COURT: Thank you, Mr. Diaz.

24 OK. Call your first witness.

25 MR. NESSIM: The government calls Alison Ernst, your

1 Honor.

2 ALISON ERNST,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 MR. DIAZ: Your Honor, we have the same issue here  
6 that we had this morning with the podium, that it's obstructing  
7 our view from the jury and the jury view from us.

8 THE COURT: Mr. Diaz, have a seat. Can you push the  
9 podium back just a little bit.

10 MR. NESSIM: Yes, your Honor.

11 THE COURT: That's where it lives.

12 MR. NESSIM: Your Honor, I'm just providing the  
13 defendant with a copy of the exhibits that I plan to use with  
14 the witness.

15 THE COURT: OK.

16 DIRECT EXAMINATION

17 BY MR. NESSIM:

18 Q. Good afternoon, Ms. Ernst.

19 A. Good afternoon.

20 Q. Where do you work?

21 A. New York State Division of Criminal Justice Services, Sex  
22 Offender Registry.

23 Q. And what is the abbreviation for the Division of Criminal  
24 Justice Services?

25 A. DCJS.

1 Q. How long have you worked at DCJS?

2 A. 18 years.

3 Q. How long have you worked at the sex offender registry?

4 A. For three.

5 Q. In what city is your office located?

6 A. Albany, New York.

7 Q. What is the sex offender registry?

8 A. It's a unit that was put in place from the SORA law that  
9 went into effect to notify communities of registered sex  
10 offenders.

11 Q. And what is your title at the sex offender registry?

12 A. Identification specialist.

13 Q. What are your duties and responsibilities as an  
14 identification specialist?

15 A. To record and maintain all of the registered sex offenders  
16 in New York State, and as my title, I handled any fingerprints  
17 or identity elements that arise within the registry.

18 Q. During the course of your work as identification  
19 specialist, have you become familiar with the sex offender  
20 registry requirements in New York State?

21 A. Yes.

22 Q. What is the name of the sex offender registry in New York?

23 A. The New York State Sex Offender Registry.

24 Q. Is that accessible to the public or to a smaller subset of  
25 people?



1 A. Excuse me?

2 Q. Who is that database accessible to?

3 A. We have two databases, we have an in-house and a public  
4 website.

5 Q. Let's start with the in-house. Does that database have a  
6 particular title?

7 A. Yes, it's the IJ portal.

8 Q. When you say "in-house," who is accessible to?

9 A. To the New York State Sex Offender Registry and also law  
10 enforcement.

11 THE COURT: Did you say IJ portal?

12 THE WITNESS: Yes, ma'am.

13 Q. And the second database, who is that accessible to?

14 A. The public.

15 Q. How is an individual's information added to the sex  
16 offender registry?

17 A. When they become convicted of -- convicted of a  
18 registerable offense.

19 Q. And a registerable offense is a defined set of offenses?

20 A. Yes.

21 Q. How is the information physically added to the database?

22 A. We receive a registration form depending on where they were  
23 convicted and how they were convicted. If you were convicted  
24 and served probation, the court sends in your registration  
25 form. If you're convicted and sent to prison or jail, your

1 jail or prison does the registration form. And if it's an out  
2 of state conviction, the board of examiners determines whether  
3 you need to register or not and then they send us the  
4 registration form.

5 Q. And what information is provided on those forms?

6 A. The defendant's ID data, arrest information, and where the  
7 person is going to be residing.

8 Q. And how are those forms processed once you receive them?

9 A. We enter it into the IJ portal.

10 Q. And what information specifically is included into the IJ  
11 portal?

12 A. Everything that's on the registration form.

13 Q. If you could remind us again, what is that information?

14 A. The name, DOB, social security number, race, sex, anything  
15 to do with the crime, information action the arresting agency,  
16 and where the person is going to be residing.

17 Q. And once a sex offender is registered, what, if any,  
18 ongoing registration requirements apply to them in New York  
19 State?

20 A. They need to update their photo, they need to make any  
21 changes to their records within a ten-day time frame, they need  
22 to annually verify all of their information on the sex offender  
23 registry.

24 THE COURT: Let me just tell you, what she just told  
25 is you what the New York State requirements are. Those

1 requirements are not necessarily the same as the federal  
2 requirements and you'll hear evidence about the federal  
3 requirements. So she's just give you this as background  
4 information. This is about compliance with the federal law.

5 BY MR. NESSIM:

6 Q. You mentioned an annual verification, how does that process  
7 work?

8 A. 21 days before the defendant's or the sex offender's  
9 registration date, a long form goes out with all of the  
10 information register's record gets printed out and mailed to  
11 the last reported address in the sex offender registry.

12 Q. And what information is the individual who receives that  
13 form expected to do?

14 A. They need to go through and make up any corrections or  
15 update any information that is required, sign and date it, and  
16 return it to DCJS.

17 Q. And how long does an individual receiving that form have to  
18 return it?

19 A. 10 days.

20 Q. And what happens if they don't return that form in time?

21 A. It's a charge. They could be charged in a crime.

22 Q. To back up a moment, you mentioned the information that's  
23 included in the IJ portal when you received the forms. What,  
24 if any, information is made available to the public in the  
25 public database?

1 A. If the defendant is the registered as a level two or three,  
2 they're on our public website and the informs that's on the  
3 public website is their name, race, address information, and  
4 employment information, and then the details of their crime.

5 THE COURT: I understand we have a technical problem  
6 here.

7 MR. NESSIM: It appears so, your Honor.

8 THE COURT: Can I see the lawyers one moment, please.

9 Again, whenever we take a sidebar, which is what we're  
10 go to do, please feel free to stand and stretch. It will help  
11 you stay awake.

12 (Continued on next page)

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1 (At sidebar)

2 THE COURT: What's the story?

3 MR. NESSIM: It seems the screens are not working.

4 THE COURT: AV has just arrived.

5 So you can't shift to something.

6 MR. NESSIM: It's a very document-heavy witness. It's  
7 the annual verification forms. Some of them I'll be reading  
8 from.

9 THE COURT: Well, they're here. I'm going to send the  
10 jury out. Hopefully they can get it fixed very quickly. If  
11 not, you're going to proceed without them.

12 MR. NESSIM: Yes.

13 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, I'm going send you  
3 back to the jury room. We're going to see if we can get the  
4 audio visual stuff fixed. You might as well relax in the jury  
5 room while we do that. Hopefully it's not going to be very  
6 long.

7 Don't discuss the case. Stay in the jury room,  
8 please. Leave your books on your chair.

9 (Recess)

10 (Jury present)

11 THE COURT: Please be seated, everybody.

12 Ms. Ernst, you're still under oath.

13 Mr. Nessim.

14 BY MR. NESSIM:

15 Q. Welcome back, Ms. Ernst.

16 A. Hi.

17 MR. NESSIM: Your Honor, at this time the government  
18 offers Government Exhibit 1 into evidence pursuant to Federal  
19 Rule of Evidence 902.

20 THE COURT: Any objection?

21 MR. DIAZ: No objection.

22 THE COURT: Government Exhibit 1 is received.

23 (Government Exhibit 1 received in evidence)

24 MR. NESSIM: Can we please publish Government Exhibit  
25 one for the jury?

1 THE COURT: Does everybody have on the screen in front  
2 of them?

3 MR. NESSIM: Page 1 reads, "United States of America,  
4 Department of the Navy."

5 Ms. Dunbar, can you please turn to page 2 of  
6 Government Exhibit 1 and let's zoom into the top half of the  
7 document.

8 It reads, "General Court Marshal Order No. 5-01,  
9 before a general court marshal convened at naval legal services  
10 office," and slightly later in that paragraph, "Salvador Diaz,  
11 u.S. Navy was arraigned and tried on the following offenses and  
12 the following findings or other dispositions were reached:  
13 Charge one, violation of the UCMJ, Article 120, finding  
14 guilty."

15 Thank you, Ms. Dunbar. You can take that down.

16 BY MR. NESSIM:

17 Q. Ms. Ernst, have you reviewed the DCJS's sex offender  
18 registration records relating to Salvador Diaz in your  
19 preparation to testify today?

20 A. Yes.

21 Q. I'm showing you what's been marked for identification as  
22 Government Exhibits 2 through 4, 6 through 13, and 62.

23 THE COURT: I'm sorry. 6 through --

24 MR. NESSIM: 6 through 13 and 62.

25 (Continued on next page)

1 BY MR. NESSIM:

2 Q. Please take a moment to look through these and let me know  
3 when you've had a chance to see them.

4 A. All set.

5 Q. Do you recognize those documents?

6 A. Yes.

7 Q. Are those records maintained by the New York DCJS?

8 A. Yes.

9 Q. Is the creation and retention of those records in the  
10 regular practice of DCJS?

11 A. Yes.

12 Q. Were those records made at or near the time of the  
13 information described within them?

14 A. Yes.

15 Q. And were they made by individuals with direct knowledge of  
16 the information or based on information conveyed from  
17 individuals with direct knowledge?

18 A. Yes.

19 MR. NESSIM: Your Honor, at this time the government  
20 offers Government Exhibit two through four, six through 13, and  
21 62.

22 THE COURT: Any objection?

23 THE DEFENDANT: Yes, your Honor. I have an objection  
24 to document three, Government Exhibit 3.

25 THE COURT: Come up. Come to side bar, please.



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1 (At side bar)

2 THE COURT: What's your objection?

3 THE DEFENDANT: Well, this is a lot of handwriting.

4 First of all, I'd like to voir dire the witness to determine if  
5 she's the one that used this handwriting in the document,  
6 because I have an objection as to the accuracy. And I don't  
7 think they're accurate and I'd like to find out how did this  
8 come about.

9 THE COURT: I'll let you -- you can cross-examine her  
10 when the time comes.

11 THE DEFENDANT: Well, I feel --

12 THE COURT: She established a foundation. You're  
13 going to try to cross-examine to suggest that even though these  
14 are business records, they're not accurate, right?

15 THE DEFENDANT: Yes. They're not accurate.

16 THE COURT: But they've established a foundation that  
17 they are business records, that is they are maintained in the  
18 ordinary course, it's regular practice to maintain them,  
19 they're prepared by someone with knowledge of the facts. Your  
20 argument is going to be the people that acknowledged the facts  
21 were wrong, right?

22 THE DEFENDANT: Yes.

23 THE COURT: You want to be heard?

24 MR. NESSIM: I believe they're business records, and  
25 we think they would be proper ground.

1 THE COURT: Your objection is overruled. But you can  
2 cross-examine her on that. All of the points you just made are  
3 legitimate points to make in cross-examination.

4 THE DEFENDANT: Very well.

5 THE COURT: Okay. Step back.

6 (Continued on next page)

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1 THE COURT: Objection is overruled. So, Government  
2 Exhibit 2, 3, 4, 6 through 13, and 62 are received.

3 (Government's Exhibits 2, 3, 4, 6 - 13, 62 received in  
4 evidence)

5 MR. NESSIM: Ms. Dunbar, please publish Government  
6 Exhibit 2.

7 BY MR. NESSIM:

8 Q. What is this document?

9 A. It's a notice of release. Acknowledgment of sex-offender  
10 registration requirements.

11 Q. And what is a notice of release?

12 A. It's when a defendant is released from a facility and it  
13 has intentions of residing in New York state and they have been  
14 convicted of a sexual registerable offense.

15 Q. And is this a notice of release that was sent to DCJS?

16 A. Yes.

17 Q. Who sent this notice?

18 A. The United States Disciplinary Barracks in Fort  
19 Leavenworth, Kansas.

20 MR. NESSIM: Ms. Dunbar, can you please highlight the  
21 top half of the page through number six. Thank you.

22 Q. Ms. Ernst, who is this notice of release -- who is the  
23 subject of this notice of release?

24 A. Salvador N. Diaz.

25 MR. NESSIM: Ms. Dunbar, can you please blow up the

bottom of this exhibit, section eight.

Q. Ms. Ernst, what is the home address that's listed for Mr. Diaz?

A. 26988th Avenue, Apartment 6B; New York, New York 10030.

Q. Can you please read that certification?

A. "I hereby acknowledge that I was informed that, upon my release from confinement or military service, I am subject to registration requirements as a sex-offender in any state or U.S. territory in which I reside, be employed, carry on a vocation or be a student. I was further informed that the chief local law enforcement officer of the jurisdiction in which I will reside upon release from confinement or military service is being provided written notice of the date of my release from confinement of military service, the offenses of and which I was convicted and that I am subject to a registration requirement as a sex-offender. This notice will also be submitted to the state local law enforcement and sex-offender officials. I understand that I must contact the office that files to make sure that sex-offender registration requirements are met."

Q. You can skip that address. But can you read the acknowledgment below?

A. "I acknowledge that I was informed that every change of my address must be reported in a manner provide by state law. I also acknowledge being informed that if I move to another

1 state, I must report the change of address to the responsible  
2 agency in the state I am leaving and comply with the  
3 registration requirements in the new state of residence. I  
4 understand that the failure to register may constitute grounds  
5 to revoke parole."

6 Finally, "I understand that if I fail to register,  
7 and/or change or update such registration information, as  
8 required under a state sex-offender registration program, I may  
9 be subject to criminal prosecution."

10 Q. Are there initials beside those acknowledgments?

11 A. Yes.

12 Q. Can you read those?

13 A. S.D.

14 Q. And is the acknowledgment signed?

15 A. Yes.

16 Q. By an offender?

17 A. Yes.

18 Q. Can you read that signature, please?

19 A. Salvador Diaz.

20 Q. What happens once DCJS receives the notice that we just  
21 talked about?

22 A. When the registry receives the form, we forward it to the  
23 board of examiners, the only entity in New York state that can  
24 determine if a non-New York state conviction is registerable in  
25 New York state.

1 MR. NESSIM: Ms. Dunbar, please publish Government  
2 Exhibit 3.

3 Q. What is this?

4 A. New York sex-offender registration form.

5 Q. And what is the it used for?

6 A. This is all the information that gets put into our IJ  
7 portal, which the defendant becomes a registered sex-offender  
8 in New York state.

9 Q. So, how does DCJS receive a form like this?

10 A. In this case, since it was a non-New York state conviction,  
11 this came from the board of examiners for the New York state  
12 sex-offender registry to register the defendant.

13 Q. And what does this sex-offender registration form in  
14 Mr. Diaz's file indicate about his need to register?

15 A. That the board of examiners has deemed him required to  
16 register as a sex-offender in New York state.

17 MR. NESSIM: Ms. Dunbar, can you please zoom in to the  
18 stamp at the top of the page.

19 Q. What is the date this document was received by DCJS?

20 A. April 6th, 2007.

21 Q. How do you know that?

22 A. Because any mail or forms that come into our office must be  
23 stamped at the time of receipt.

24 MR. NESSIM: Ms. Dunbar please publish Government  
25 Exhibit 4.

1 Q. What happens after you receive the form we just saw?

2 A. Since it was a non-New York state conviction, we fill out a  
3 registration form and mail it to the offender for him or she to  
4 sign and return it to us. And this is the receipt from the  
5 certified mailing.

6 Q. Government Exhibit 4?

7 A. Correct.

8 Q. How do you know that this is the receipt from that  
9 certified mail?

10 A. Because that's the only form that the sex-offender registry  
11 sends out certified mail.

12 Q. And who prepared this label that's on the receipt?

13 A. Someone at the New York State Sex-offender Registry.

14 Q. And what is the address on the label?

15 A. 2698 8th Avenue, 6B; New York, New York City 10030.

16 MR. NESSIM: Ms. Dunbar, please publish Government  
17 Exhibit 62.

18 Q. What is this?

19 A. This is a copy of the New York State Sex-offender Registry  
20 from the IJ portal, that is our in-house record.

21 Q. And who maintains the information on the IJ portal?

22 A. The sex-offender registry unit.

23 Q. And who is the subject of this report?

24 A. Salvador Diaz.

25 MR. NESSIM: Ms. Dunbar, please turn to page three of



1 this exhibit and zoom in to the current registration section.

2 Q. Ms. Ernst, what is the date of registration?

3 A. March 30th, 2007.

4 Q. And what is the ending date?

5 A. Life.

6 MR. NESSIM: Ms. Dunbar, please publish Government  
7 Exhibit 6.

8 Q. What is this?

9 A. It's a sex-offender registry address verification form.

10 Q. And what is a sex-offender registry address verification  
11 form?

12 A. This is the form that we used to mail out once a year.

13 Q. This is part of the annual verification process?

14 A. Correct.

15 Q. And who is this form addressed to?

16 A. Salvador Diaz.

17 Q. What address is this form mailed to?

18 A. 2698 8th Avenue, Apartment 6B; New York City, New York  
19 10030.

20 Q. What is printed under the name of the form at the top of  
21 the page?

22 A. Please correct any information that is inaccurate.

23 Q. What, if any, changes were made to this form?

24 A. The address was changed, and a vehicle was added.

25 Q. What is the change to the address that was made?

1 A. Change to the address to 52 Arden Street, Apartment 5A; New  
2 York City, New York 10040.

3 Q. Is this form signed?

4 A. Yes.

5 Q. Please read the signature.

6 A. Salvador Diaz.

7 Q. What is the date?

8 A. 4/3/2008.

9 Q. Let's turn to page two. Was this form returned to DCJS?

10 A. Yes.

11 Q. How do you know?

12 A. Because any mailings or forms that come into our office  
13 must be stamped -- time and date-stamped.

14 Q. And why is it important to stamp the forms coming into your  
15 office?

16 A. To verify when we receive them. Annual verification, the  
17 change of address forms must be processed in a timely manner,  
18 so they have to be stamped in as soon as we receive them.

19 Q. And why do they need to be processed in a timely manner?

20 A. Because of the ten-day law change for the sex-offender and  
21 also the annual verification. They only have ten days to  
22 return it to us. Sometimes the forms sit in bins for a day or  
23 two, and we need to make sure that we know when we received it  
24 in order to make the sex-offender not fail if they report  
25 within that timeframe.

1 MR. NESSIM: Ms. Dunbar, please publish Government  
2 Exhibit 7.

3 Q. Ms. Ernst, what is this?

4 A. Sex-offender registry address verification form.

5 Q. And what year is this for?

6 A. 2010.

7 Q. Who was it sent to?

8 A. Salvador Diaz.

9 Q. At what address?

10 A. 52 Arden Street, Apartment 5A; New York, New York 10040.

11 Q. Was it signed?

12 A. Yes.

13 Q. Can you read the signature?

14 A. Salvador Diaz.

15 MR. NESSIM: Ms. Dunbar, please publish Government  
16 Exhibit 8.

17 Q. What is this?

18 A. This is the New York state sex-offender registry annual  
19 address verification form.

20 Q. Why does this form look different than the last two address  
21 verification forms we've seen?

22 A. We needed to update our form to include more information as  
23 concerning internet and multiple addresses.

24 Q. And who is this form sent to?

25 A. Salvador Diaz.

1 Q. And what year?

2 A. 2011.

3 MR. NESSIM: Zoom in to the instructions on the first  
4 page.

5 Q. Ms. Ernst, would you please read the instructions?

6 A. "Instructions: One, review each line of information on  
7 this form carefully. Two, if you find any information that is  
8 incorrect or outdated, cross out incorrect or outdated  
9 information with a single line. Three, enter any corrections  
10 or any new additional information in the blank boxes provided.  
11 This form must be signed and all pages returned, even if none  
12 of the information has changed. Failure to return all pages of  
13 this form within ten days of receipt is a felony and may result  
14 in the issuance of a warrant for your arrest."

15 MR. NESSIM: Ms. Dunbar, please turn to the second  
16 page and let's zoom in to the primary address section.

17 Q. What's listed as the primary address here?

18 A. 52 Arden Street, Apartment 5A; New York, New York, 10040.

19 MR. NESSIM: Ms. Dunbar, please turn to page five of  
20 this exhibit and zoom in.

21 Q. Ms. Ernst, please read the text at the top of the page?

22 A. "I certify that the information on this form is complete  
23 and accurate. I have crossed out all information that is  
24 incorrect or outdated. I have added all corrections and all  
25 new information. I understand that failing to provide this

1 information or providing false information is a felony.

2 Q. Is this form signed?

3 A. Yes.

4 Q. Can you please read the signature?

5 A. Salvador Diaz.

6 MR. NESSIM: Ms. Dunbar, please publish Government  
7 Exhibit 9.

8 Q. Is this the same form we've seen a couple times?

9 A. Correct.

10 Q. What's the date of this form?

11 A. 2012.

12 Q. That's the year on the form?

13 A. Correct.

14 Q. Who was it sent to?

15 A. Salvador Diaz.

16 MR. NESSIM: Ms. Dunbar, please turn to the second  
17 page and let's zoom in to the primary address section.

18 Q. What's listed as the address here?

19 A. 52 Arden Street, Apartment 5A; New York, New York 10040.

20 MR. NESSIM: Ms. Dunbar, please turn to page five.

21 Q. Ms. Ernst, is this form signed?

22 A. Yes.

23 Q. Can you please read the signature?

24 A. Salvador Diaz.

25 MR. NESSIM: Ms. Dunbar, please publish Government

1 Exhibit 10.

2 Q. What is this?

3 A. Sex-offender registry annual address verification form.

4 Q. Who is the form sent to?

5 A. Salvador Diaz.

6 Q. For which year?

7 A. 2013.

8 MR. NESSIM: Ms. Dunbar, please turn to the second  
9 page and let's zoom in to the primary address section.

10 Q. Can you please read the address listed?

11 A. 52 Arden Street, Apartment 5A; New York, New York 10040.

12 MR. NESSIM: Ms. Dunbar, please turn to page five.

13 Q. Is this form signed?

14 A. Yes.

15 Q. Can you please read the signature?

16 A. Salvador Diaz.

17 MR. NESSIM: Ms. Dunbar, please publish Government  
18 Exhibit 11.

19 Q. Is this an annual address verification form?

20 A. Yes.

21 Q. Who was you it sent to?

22 A. Salvador Diaz.

23 Q. For what year?

24 A. 2014.

25 MR. NESSIM: Ms. Dunbar, please turn to the second

1 page and highlight the primary address section.

2 Q. What is listed as the primary address?

3 A. 52 Arden Street, Apartment 5A; New York, New York 10040.

4 MR. NESSIM: Ms. Dunbar, please turn to page four and  
5 highlight the driver's license information.

6 Q. Is the driver's license listed?

7 A. Yes.

8 Q. What state issued these driver's license?

9 A. New York.

10 MR. NESSIM: Ms. Dunbar, please turn to page five.

11 Q. Is this form signed?

12 A. Yes.

13 Q. Can you please read the signature?

14 A. Salvador Diaz.

15 MR. NESSIM: Ms. Dunbar, please publish Government  
16 Exhibit 12.

17 Q. Is this an annual verification form?

18 A. Yes.

19 Q. Who was the form sent to?

20 A. Salvador Diaz.

21 Q. For which year?

22 A. 2015.

23 Q. At which address?

24 A. Tea Arden Street; Apartment 5A; New York, New York 10040.

25 MR. NESSIM: Ms. Dunbar, please turn to page five.

1 Q. Was this form signed?

2 A. No.

3 MR. NESSIM: Ms. Dunbar, please turn to page seven.

4 Q. What is this?

5 A. This is the returned envelope from the verification form  
6 from the post office.

7 Q. Why was the envelope returned?

8 A. Any mail the sex-offender registry mails out to any  
9 offenders is non-forwardable, so the post office returns it to  
10 us if the offender is not at that address.

11 MR. NESSIM: Ms. Dunbar, please turn to page eight.

12 Q. On what date -- if you can read it. On what date did the  
13 sex-offender registry receive this form?

14 A. April 6th, 2015.

15 MR. NESSIM: Ms. Dunbar, please publish Government  
16 Exhibit 13.

17 Q. Is this another annual address verification form?

18 A. Yes.

19 Q. Who was it sent to?

20 A. Salvador Diaz.

21 Q. For which year?

22 A. 2016.

23 Q. What address was it mailed to?

24 A. 52 Arden Street, Apartment 5A; New York, New York 10040.

25 MR. NESSIM: Ms. Dunbar, please turn to page five.



1 Q. Was this form signed?

2 A. No.

3 MR. NESSIM: Ms. Dunbar, please turn to page ten.

4 Q. What is this?

5 A. This is the returned envelope from the annual address  
6 verification form.

7 MR. NESSIM: Ms. Dunbar, please turn to page eight.

8 Q. On what date did DCJS receive the returned envelope?

9 A. March 31st, 2016.

10 MR. NESSIM: I can have one moment your Honor?

11 No further questions.

12 THE COURT: Okay. Mr. Diaz.

13 CROSS-EXAMINATION

14 BY THE DEFENDANT:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Referring to Government Exhibit three --

18 THE DEFENDANT: Does she have a copy?

19 THE COURT: We can get it pulled up. You want the  
20 jury to be able to see it at the same time.

21 THE DEFENDANT: Well, I want the witness to see it.

22 THE COURT: Yes. But would you also like the jury to  
23 see it?

24 THE DEFENDANT: And the witness.

25 THE COURT: It will be on her screen.

1 THE DEFENDANT: Very well.

2 THE COURT: It's on your screen also.

3 BY THE DEFENDANT:

4 Q. This page has some typewritten information and some  
5 handwritten information?

6 A. Correct.

7 Q. Is that your handwriting?

8 A. No.

9 Q. Do you know who wrote all those things in there?

10 A. No. This was before I joined the registry team.

11 Q. So, how do you know this information is correct?

12 JUROR: Because according to procedure, the person who  
13 did the form would have gotten the information from the board  
14 of examiners.

15 THE DEFENDANT: I beg your pardon, your Honor. I'm  
16 looking for a different document.

17 Q. Referring to block number 30, can you read what it says in  
18 there?

19 A. Military U.S. Army.

20 Q. And was I in the U.S. Army?

21 A. I have no idea.

22 Q. I refer you back to Government Exhibit 1. It says  
23 Department of the Navy.

24 THE COURT: Do you have a question?

25 THE DEFENDANT: Yes.

1 Q. How do you account for that?

2 A. I personally cannot account for that because I was not at  
3 the registry at the time that this was prepared.

4 Q. So, you didn't -- in essence, you're telling us that you're  
5 not -- you cannot testify for the veracity of any of these  
6 document, you can only say that it exists?

7 A. Because they were produced during the course of DCJS's  
8 business records.

9 Q. Yes. I understand that. But you're also saying that as  
10 we're demonstrating that there are some inaccuracies in the  
11 document, and you're not able to account for those?

12 A. Correct.

13 Q. In addition, just to make sure in block number 32, it says  
14 "date of arrest," right?

15 A. I still have the other one up. I don't know what you're  
16 referring to.

17 THE COURT: Can you go back to GX3.

18 THE DEFENDANT: Government Exhibit 3.

19 THE WITNESS: Excuse me. What block again?

20 THE DEFENDANT: No. 30.

21 THE COURT: I thought you said 32.

22 THE DEFENDANT: Yes. My mistake. 32.

23 Q. What does that block tell you?

24 A. 12/12/2000.

25 Q. What does it indicate to you?

1 A. December 12th of 2000.

2 Q. But what is the title of the block?

3 A. Date of arrest.

4 Q. Date of arrest. It says that I was arrested December 12,  
5 2000. If you refer to page two of document number one --  
6 sorry. I'm sorry. That's the incorrect one.

7 Q. We know also in block 33, it says "date of crime."

8 Can you read that?

9 A. 12/12/200.

10 Q. You find that inconsistent that the date of crime is the  
11 same date as the date of arrest?

12 A. Yes.

13 Q. The date of conviction, block number 40, what does it read  
14 there?

15 A. October 2nd, 2001.

16 Q. Does that sound consistent to you, that this is reading  
17 here "date of arrest, 2000," now it's saying that it was in  
18 2001?

19 A. Date of arrest --

20 Q. Date of conviction?

21 A. Date of arrest and date of conviction can be far apart  
22 because you have a trial and all of that.

23 Q. That is correct. However, looking at page four of  
24 Government Exhibit 3 -- sorry, page three --

25 THE COURT: Government Exhibit 3 is just a one-page

1 document.

2 THE DEFENDANT: Well, I don't know where this came  
3 from. What is that?

4 MR. NESSIM: Exhibit 1.

5 THE DEFENDANT: My apologies to the jury and the  
6 Court.

7 Exhibit 1, page number three. It's actually page  
8 number two.

9 THE COURT: It's the third page of the document.

10 THE DEFENDANT: The third page of the document.

11 BY THE DEFENDANT:

12 Q. What does it say there?

13 A. Sentence: Adjudged on December 1st, 2000.

14 Q. Now, that doesn't jibe with the fact that you're saying the  
15 date of arrest may have been different. But the date of  
16 conviction, how can I judge a sentence before the conviction?

17 MR. NESSIM: Objection.

18 THE COURT: Sustained.

19 THE DEFENDANT: What was?

20 THE COURT: Ask another question.

21 BY THE DEFENDANT:

22 Q. The date of conviction is listed there, as you said, on  
23 October of 2001.

24 Is that consistent with the date of the crime and the  
25 date the sentence was adjudged?

1 A. No, they're not consistent.

2 Q. So, these documents, from what I see, are totally  
3 unreliable?

4 MR. NESSIM: Objection.

5 THE COURT: Yeah. Sustained.

6 Mr. Diaz, you'll have an opportunity to sum up. Now,  
7 you just get to ask her questions.

8 THE DEFENDANT: Very well. That is all, your Honor.

9 THE COURT: Okay.

10 Any redirect?

11 MR. NESSIM: Briefly, your Honor.

12 REDIRECT EXAMINATION

13 MR. NESSIM: Ms. Dunbar, can you please publish  
14 Government Exhibit 3?

15 BY MR. NESSIM:

16 Q. Ms. Ernst, you testified that this is a document that was  
17 prepared by the board of examiners; is that right?

18 A. Correct.

19 Q. And then it's maintained by the DCJS in its file on  
20 Mr. Diaz?

21 A. Correct.

22 Q. And what does this form trigger again?

23 A. The registration process to get Mr. Diaz up on the  
24 sex-offender registry.

25 Q. And is information like which branch of the army material

1 to that determination?

2 THE DEFENDANT: Objection, your Honor.

3 THE COURT: Overruled.

4 BY MR. NESSIM:

5 Q. Is that an important fact, what branch of the army Mr. Diaz  
6 was in?

7 A. No.

8 THE COURT: I think you mean which branch of the  
9 service.

10 MR. NESSIM: Which branch of the service. Excuse me.

11 THE WITNESS: Correct. That is not an important.

12 BY MR. NESSIM:

13 Q. And you don't work for the armed services?

14 A. No.

15 Q. You don't have knowledge about the court marshal  
16 proceedings?

17 A. No, I do not.

18 THE COURT: Okay. This is your witness, Mr. Nessim.  
19 Don't lead, please.

20 BY MR. NESSIM:

21 Q. Ms. Ernst, when this file is received from the board of  
22 examiners, just remind us again, what happens next?

23 THE DEFENDANT: Objection, your Honor. That's been  
24 asked and answered.

25 THE COURT: Hang on. Sustained.

1 BY MR. NESSIM:

2 Q. Was Mr. Diaz required to register as a sex-offender?

3 A. Yes.

4 Q. And did he satisfy those requirements?

5 A. No. As far as what? I'm sorry. I'm confused.

6 Q. Was he initially registered?

7 A. Yes.

8 Q. And was he responding to your address verification --

9 THE DEFENDANT: Objection, your Honor.

10 THE COURT: Sustained. It's beyond the scope.

11 MR. NESSIM: May I have one moment, your Honor?

12 THE COURT: Sure.

13 MR. NESSIM: Nothing further, your Honor.

14 THE COURT: Okay. Anything further, Mr. Diaz?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Okay. Thank you. You may step down.

17 Call your next witness.

18 MS. TARLOW: Your Honor, the government calls Kelly  
19 Rourke.

20 KELLY ROURKE,

21 called as a witness by the Government,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. TARLOW:

25 Q. Good afternoon, Ms. Rourke.



1           Where do you work?

2       A.   I work for the NYPD sex-offender unit.

3       Q.   What is your title?

4       A.   Police officer.

5       Q.   How long have you worked for the NYPD?

6       A.   Just over 21 years.

7       Q.   What are some of your duties and responsibilities as an  
8       officer assigned to the NYPD sex-offender monitoring unit?

9       A.   We track and monitor all sex-offenders in New York City,  
10      the five boroughs.

11      Q.   As part of those responsibilities, do you maintain records  
12      associated with sex-offenders?

13      A.   Yes, we do.

14      Q.   Have you reviewed the records maintained by the NYPD  
15      associated with an individual named Salvador Diaz?

16      A.   Yes, I have.

17      Q.   Officer Rourke, I'm handing you exhibits that have been  
18      marked as Government Exhibits 5, 27 and 28. Can you please  
19      review those documents and look up at me when you're finished.

20           Do you recognize these documents?

21      A.   I do.

22      Q.   What are they?

23      A.   They are two documents that we have offenders sign when  
24      they come into our office. And the third document is the  
25      signed registration form.

1 Q. Where were these particular forms maintained?

2 A. We maintain them in our office. The two forms and the  
3 registration were in his file.

4 Q. In Mr. Salvador Diaz's file?

5 A. Yes.

6 Q. Is the retention of these forms in the regular practice of  
7 the NYPD?

8 A. Yes.

9 Q. Were these forms created at or near the time that the  
10 activities reflected therein took place?

11 A. Yes.

12 MS. TARLOW: Your Honor, the government officers  
13 Government Exhibits 5, 27 and 28 into evidence.

14 THE COURT: Any objection?

15 THE DEFENDANT: No objection, your Honor.

16 THE COURT: All right. 5, 27 and 28 are received.

17 (Government's Exhibits 5, 27 and 28 received in  
18 evidence)

19 BY MS. TARLOW:

20 Q. Ms. Rourke, can you please read the title of this form?

21 A. "This is the New York State Sex-offender Registration Form.

22 Q. And whose name is signed on the bottom left of the form?

23 A. Salvador Diaz.

24 Q. What is the date of this form?

25 A. February 18th, 2010.

1 Q. Turning your attention to the second page of this exhibit.

2 MS. TARLOW: Ms. Dunbar, can you please highlight  
3 point two of this form?

4 Q. Officer Rourke, can you please direct your attention to the  
5 highlighted portion and read aloud what is written?

6 A. Yes. If you move to another state, you must register as a  
7 sex-offender within ten days of establishing residence.

8 Q. Turning your attention back to the first page of this form  
9 -- turning your attention to Exhibit 27.

10 What is the title of this form?

11 A. New York State Sex-offender Rules and Regulations.

12 Q. Whose name is printed on the bottom of the form?

13 A. Salvador Diaz.

14 Q. Whose name is signed on the bottom left of the form?

15 A. Salvador Diaz.

16 Q. And what is the date?

17 A. December 2nd, 2009.

18 MS. TARLOW: Ms. Dunbar, please publish Government  
19 Exhibit 28.

20 Q. What is the title of this form?

21 A. Top ten ways registered sex-offenders fail to register.

22 Q. What is the date that this document was signed?

23 A. December 2nd, 2010.

24 MS. TARLOW: Ms. Dunbar, please highlight point one of  
25 this form.

Q. Officer Rourke, directing your attention to this portion of the form, can you please read aloud what is written?

A. Yes.

"Actually live at your registry address. Effective August 17th, 2007, the crime of failure to register is a felony charge."

MS. TARLOW: Ms. Dunbar, please highlight point five of this form.

Q. Officer Rourke, can you please read aloud the first sentence of point five?

A. "If you move to a new address, you have no later than ten days to officially file an address change."

MS. TARLOW: Ms. Dunbar, please highlight point ten of this form.

Q. Officer Rourke, directing your attention to this portion of the form, can you please read aloud what is written?

A. Again, "Actually live at your registry address."

Q. And can you please read the name signed on the bottom of this form?

JUROR: Salvador Diaz.

THE DEFENDANT: Objection, your Honor.

THE COURT: You're objecting to whose name is signed at the bottom of the form?

THE DEFENDANT: No. I'm objecting to the introduction to this evidence here.

1 THE COURT: You already said you didn't have an  
2 objection. Sit down. It's too late. We already have an  
3 objection.

4 MS. TARLOW: May I have one moment, your Honor?

5 THE COURT: You may.

6 MS. TARLOW: Nothing further, your Honor.

7 THE COURT: Okay. Mr. Diaz, do you have any  
8 cross-examination questions?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Okay.

11 CROSS-EXAMINATION

12 BY THE DEFENDANT:

13 Q. Good day.

14 A. Hello.

15 Q. Exhibit 5, can you verify the accuracy of this document?

16 A. I don't understand the question.

17 Q. Well, can you swear to the best of your knowledge that this  
18 document is accurate?

19 A. Yes.

20 Q. Based on what?

21 A. Based on it's maintained in a folder that we're under a  
22 business duty to report accurately.

23 Q. Do you have an idea who maintains the folder?

24 A. Yes.

25 Q. Who would that be?

1 A. The NYPD Sex-offender Register Unit.

2 Q. Do you know who filled this form out?

3 A. I don't.

4 Q. Then how do you know exactly? Just because -- you're  
5 relying that the state -- everything that the state does is  
6 accurate? Is that the reason?

7 A. Well, when we get the form, it's already filled out. When  
8 the sex-offender unit gets the form, it's filled out already  
9 with the exception of the signature.

10 Q. So, you have no idea exactly --

11 THE COURT: Wait a minute, Mr. Diaz. You've got to  
12 let her finish her answer before you ask the next question.

13 So, you said you received it. It's already filled out  
14 with everything except the signature.

15 THE WITNESS: Oftentimes, yes.

16 So, sometimes it's already signed and it's  
17 cross-referenced to other court documents.

18 BY THE DEFENDANT:

19 Q. But my question again was, you don't have any idea whether  
20 it's accurate or not. You're just assuming that it's accurate  
21 because it's in state records?

22 MS. TARLOW: Objection, your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: I'm sorry. Could you repeat that  
25 question again?

1 BY THE DEFENDANT:

2 Q. You don't have any idea whether this is an accurate  
3 document or not, you're simply relying on the fact that it is a  
4 state document, you're accepting it as proof that it is  
5 accurate?

6 THE COURT: By "accurate," you mean the information  
7 that's entered on the form?

8 THE DEFENDANT: Correct.

9 THE WITNESS: Yes, I believe that it's accurate,  
10 because we get it from a government agency that's also under a  
11 responsibility to report these accurately.

12 Q. In reference to document 27. You stated that as a New York  
13 city police officer, document No. 27 -- what is the title of  
14 the document?

15 A. New York State Sex-offender Rules and Regulations.

16 Q. So, are you aware that this is not a New York state court?

17 A. Say that again?

18 Q. Are you aware that this is not a state court that we're in?

19 THE COURT: Are you aware that we're not in state  
20 court?

21 THE WITNESS: I am aware.

22 BY THE DEFENDANT:

23 Q. Are you aware that no one has referred charges to my person  
24 in New York state?

25 A. I'm not aware of that. But I know that this is a federal

1 court, yes.

2 Q. Correct. So, why then present the evidence of something  
3 that is totally irrelevant to what is at stake here?

4 MS. TARLOW: Objection, your Honor.

5 THE COURT: Sustained.

6 Q. The same thing, Government Exhibit 28. This is also a New  
7 York State Police Department sex-offender monitoring unit form.  
8 Is that correct?

9 A. This is a New York City Police Department form.

10 Q. Right. So, Government Exhibit 28, and the previous one  
11 that we just discussed are not federal forms.

12 Why are you referring to them in a federal program?

13 MS. TARLOW: Objection, your Honor.

14 THE COURT: Sustained.

15 BY THE DEFENDANT:

16 Q. But you do recognize that this is not federal forms; is  
17 that correct?

18 A. Yes.

19 Q. Going back -- and I apologize for that I'm going back and  
20 forth -- to document five. Government Exhibit 5. You've read  
21 what's highlighted. And I can't understand what it says.

22 THE COURT: Mr. Diaz, you can't testify. You can only  
23 ask questions.

24 Can you blow up number two, please?

25 THE DEFENDANT: Yes, please.



1 BY THE DEFENDANT:

2 Q. Can you read number seven, please?

3 THE COURT: Number seven?

4 THE DEFENDANT: Yes.

5 THE COURT: She'll blow it up for you in just a  
6 second.

7 Can you read that?

8 THE WITNESS: Yes.

9 THE COURT: You want her to read it out loud?

10 THE DEFENDANT: No. If she can read it.

11 Can you read it?

12 THE COURT: Out loud?

13 THE DEFENDANT: No, if she can read it or not.

14 THE COURT: Oh, is it legible enough?

15 THE DEFENDANT: Exactly.

16 THE COURT: Okay. Can you read it?

17 THE WITNESS: Yes.

18 BY THE DEFENDANT:

19 Q. But would you be able to read it if it was shown to you in  
20 the original size?

21 A. Yes.

22 Q. We just had to blow it up.

23 A. Well, I can read it off of this, which is the original  
24 size.

25 Q. Oh. That one is more accurate than --

1 THE COURT: It's the same thing. It's just a paper  
2 copy, Mr. Diaz. She has the paper copy in front of her.

3 BY THE DEFENDANT:

4 Q. Now, going back to the front of the document, Government  
5 Exhibit 5, you weren't there at the time that this document was  
6 signed, were you?

7 A. No.

8 Q. Okay. Very well.

9 THE DEFENDANT: That's all, your Honor.

10 THE COURT: Ms. Tarlow.

11 THE DEFENDANT: I'm sorry. One more question.

12 THE COURT: Okay.

13 BY THE DEFENDANT:

14 Q. Number 30, you testified before to the best of your  
15 knowledge that this was an accurate document; is that correct?

16 A. What page are you on?

17 Q. Number five, the front of the page.

18 A. Okay.

19 Q. And if you look at block number 30 --

20 A. Okay.

21 Q. -- what does it say there? Can you read that?

22 A. It says U.S. Army, arresting agency.

23 Q. Do you know that I was in the army?

24 A. No.

25 Q. Do you know what service I was in?

1 A. The army.

2 THE DEFENDANT: Very well. Thank you.

3 THE COURT: Any redirect?

4 MS. TARLOW: No, Your Honor.

5 THE COURT: Call your next witness.

6 MS. TARLOW: The government calls Pablo Rios.

7 PABLO RIOS,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. TARLOW:

12 Q. Good afternoon, Mr. Rios.

13 A. Good afternoon.

14 Q. Where do you work?

15 A. I work for Lemle & Wolff.

16 Q. What is Lemle & Wolff?

17 A. Owner and manager and developer of affordable housing.

18 Q. What is your title at Lemle & Wolff?

19 A. My title is property manager.

20 Q. How long have you been in that role as property manager?

21 A. With Lemle & Wolff, I've been one year -- a year and a  
22 half.

23 Q. Are you familiar with the building that is located at 52  
24 Arden Street in Manhattan?

25 A. Yes, I am.

1 Q. Is that a property that's managed by Lemle & Wolff?

2 A. Yes.

3 Q. Does Lemle & Wolff maintain records associated with their  
4 properties?

5 A. Yes, we do.

6 Q. What, if any, types of records does Lemle & Wolff maintain?

7 A. We maintain applications, leases, lease renewals, anything  
8 pertinent to the tenant relationship.

9 Q. Have you reviewed records maintained by Lemle & Wolff  
10 associated with an individual named Salvador Diaz?

11 A. Yes, I have.

12 Q. Mr. Rios, I'm handing you documents that have been marked  
13 for identification as Government Exhibits 14 through 17 and  
14 Government Exhibit 19.

15 A. Okay.

16 Q. Please review those documents and look at me when you're  
17 finished.

18 Do you recognize these documents?

19 A. Yes, I do.

20 Q. Generally what are they?

21 A. Most of the documents, all but one, are lease renewal  
22 forms. So, when a tenant signs the vacancy lease, which is the  
23 first initial lease that has all of the language, then these  
24 are subsequent leases to -- after that first release. This  
25 shows what times of the tenancy and when it starts and when it

1 ends.

2 Q. And you said that they were all but one lease renewal form.  
3 What is the final form?

4 A. The final part is what we call --

5 Q. Are these forms that were maintained in your office filed  
6 for a particular apartment?

7 A. Yes.

8 Q. Were these forms made in the regular course of business at  
9 Lemle & Wolff?

10 A. Yes.

11 Q. Were they created at or near the time that activities  
12 therein took place?

13 A. Yes.

14 MS. TARLOW: Your Honor, the government offers  
15 Government Exhibit 14 through 17 and Government Exhibit 19 into  
16 evidence.

17 THE COURT: Any objection?

18 THE DEFENDANT: No.

19 THE COURT: Okay. 14, 15, 16, 17 and 19 are received.

20 (Government's Exhibits 14, 15, 16, 17, 19 received in  
21 evidence)

22 MS. TARLOW: Ms. Dunbar, please publish Government  
23 Exhibit 14.

24 Q. What type of form is this?

25 A. A renewal release form.

1 Q. What apartment is listed on this form?

2 A. It's apartment 5A, as in apple.

3 Q. What is the address of that apartment?

4 A. 52 Arden Street.

5 Q. Who are listed as the tenants of apartment 5A?

6 A. Gladys Rodriguez and Salvador Diaz.

7 Q. When does the lease renewal period begin on this form?

8 A. On this form the lease periods begins September 1st, 2008.

9 Q. And when does the lease period end?

10 A. It expires August 31st, 2010.

11 Q. Was this form signed?

12 A. It was signed.

13 Q. Please read the name that is signed on the bottom right of  
14 the form next to the tenant signature.

15 A. It was signed by Gladys Rodriguez and Salvador Diaz.

16 MS. TARLOW: Please publish Government Exhibit 15.

17 Q. What type of form is this?

18 A. This is also a renewal lease form.

19 Q. And what apartment is listed on this form?

20 A. 5A, as in apple.

21 Q. And, again, is that 52 Arden Street?

22 A. Correct.

23 Q. Who are listed as the tenants of Apartment 5A on this  
24 renewal form?

25 A. Gladys Rodriguez and Salvador Diaz.

1 Q. When does the lease renewal period begin?

2 A. September 2010.

3 Q. When does the lease renewal period end?

4 A. Expires August 31st, 2012.

5 Q. Was this lease renewal form signed?

6 A. Yes, it was.

7 Q. Please read the name signed on the bottom right of the form  
8 next to the letters TNT?

9 A. Salvador Diaz and Gladys Rodriguez.

10 MS. TARLOW: Ms. Dunbar, please publish Government  
11 Exhibit 16.

12 Q. What type of form is this?

13 A. Renewal release form.

14 Q. What apartment?

15 A. 5A, as in apple.

16 Q. And is that also at 52 Arden Street?

17 A. That is correct.

18 Q. Who are listed as the tenants of Apartment 5A on this  
19 renewal form?

20 A. The tenants are Gladys Rodriguez and Salvador Diaz.

21 Q. When does the lease renewal period begin?

22 A. It begins September 1st, 2012.

23 Q. When does the lease period end?

24 A. It ends August 31, 2014.

25 Q. Was this lease renewal form signed?

1 A. Yes, it was.

2 Q. Please read the name that is signed on the bottom right of  
3 the form?

4 A. Gladys Rodriguez and Salvador Diaz.

5 Q. And whose signatures are those, according to the form?

6 A. The tenants are indicated at the top.

7 MS. TARLOW: Ms. Dunbar.

8 Q. Please turn your attention to Government Exhibit 17.

9 What type of form is this, Mr. Rios?

10 A. This is also renewal lease form.

11 Q. And what apartment is listed on this form?

12 A. The apartment is 5A, as in apple.

13 Q. And is that also at 52 Arden Street?

14 A. That's correct.

15 Q. Who are listed as the tenants of apartment 5A on this  
16 renewal form?

17 A. Gladys Rodriguez and Salvador Diaz.

18 Q. When does the lease renewal period begin on this form?

19 A. It begins September 1st, 2014.

20 Q. And when does the lease period end?

21 A. According to what is selected, one year lease renewal, so  
22 it expires August 31st, 2015.

23 Q. Was this renewal lease form signed?

24 A. Yes, it was.

25 Q. By whom?



1 A. Only by Gladys Rodriguez.

2 Q. Was Mr. Diaz listed as a tenant on any subsequent lease  
3 renewal forms for this apartment?

4 A. After this, no.

5 MS. TARLOW: Ms. Dunbar, please publish Government  
6 Exhibit 19.

7 Q. Mr. Rios, what is this document?

8 A. This is a form that we use called apartment vacancy report.

9 Q. And what apartment is listed as having been vacated?

10 A. 5A, as in apple.

11 Q. And what is the address of that apartment?

12 A. 52 Arden Street.

13 Q. And what date is that apartment listed as having been  
14 vacated?

15 A. It's listed as having been vacated December 31st, 2014.

16 Q. Who is listed as having vacated the apartment?

17 A. Gladys Rodriguez.

18 Q. Is Mr. Diaz' name listed?

19 A. Not on this form.

20 Q. Does Lemle & Wolff always list all tenants on these  
21 reports?

22 A. We try to in the ordinary course.

23 Q. Are there some circumstances where all tenants who are  
24 living in the apartment may not be listed?

25 A. If they left prior to, the tenant, they might not be

1 listed. And in our property management system, if they're the  
2 tenant of record, or if they're the first name that's there,  
3 sometimes we might miss that.

4 Q. What, if anything, does Lemle & Wolff do to confirm that an  
5 apartment has been vacated?

6 A. We do inspection and generate a report.

7 Q. And when would a vacancy report be generated?

8 A. As soon as we conduct an inspection.

9 Q. Is the vacancy report only when all tenants in the  
10 apartment have vacated that apartment?

11 A. Yes. That means we have possession of the apartment, and  
12 all tenants have vacated.

13 MS. TARLOW: One moment, your Honor.

14 THE COURT: Okay.

15 MS. TARLOW: Nothing further.

16 THE COURT: Mr. Diaz, do you have any cross?

17 THE DEFENDANT: No. No cross of him.

18 THE COURT: Okay. Thank you. You can step down.

19 It's almost 5 o'clock, so we're going to stop for the  
20 day. You get five minutes off. We use that tomorrow and keep  
21 you five minutes late.

22 So, don't discuss the case. Have a wonderful evening.  
23 Please remember to be here between 9:00 and 9:15 so we can  
24 start promptly tomorrow. Don't discuss the case and have a  
25 wonderful evening.

1 (Jury not present)

2 THE COURT: Okay. How are we doing on time,  
3 Ms. Tarlow?

4 MS. TARLOW: Yes, your Honor. We are proceeding as  
5 expected. We have six witnesses remaining.

6 THE COURT: Are they going to be about the same length  
7 as these?

8 MS. TARLOW: Yes, your Honor.

9 THE COURT: Okay. Mr. Diaz, as of now, do you  
10 anticipate a defense case?

11 THE DEFENDANT: I am sorry, your Honor?

12 THE COURT: As of right now, do you anticipate a  
13 defense case?

14 THE DEFENDANT: Not as of now, no, Your Honor.

15 THE COURT: Not as of now. So, you're not planning to  
16 testify?

17 THE DEFENDANT: I may, but that's --

18 THE COURT: Okay. As of right now you're saying no,  
19 but you may change your mind. Is that what you're telling me?

20 THE DEFENDANT: Yes. I have to examine. This was not  
21 expected. Just as it was not expected for you, it was  
22 unexpected for me.

23 THE COURT: I can't say it was entirely unexpected for  
24 me.

25 THE DEFENDANT: For me, it was.

1 THE COURT: I don't know why.

2 As I told you, we're going to do a charge conference  
3 this evening. You got charged last week. I'm going to give  
4 you like a ten-minute break to get your ducks in a row. We'll  
5 do the charge conference sitting at the defense table at the  
6 back. So if the government can just turn around and the  
7 defense can stay where they are, and we can take down that  
8 screen, that will be helpful.

9 The one issue that Mr. Diaz raised this morning -- I  
10 think we probably can dispose of this evening.

11 Does the government want to be heard on Government  
12 Exhibit 35? First, I want to start with Mr. Diaz.

13 Mr. Diaz, what's your objection to 35?

14 THE DEFENDANT: Your Honor, this is -- on the Rule  
15 403, I think it's prejudicial.

16 THE COURT: Okay. That's all you need to say.

17 All right. Government, what's your response?

18 MR. NESSIM: Your Honor, we believe the probative  
19 value far outweighs it's prejudicial effect.

20 THE COURT: Tell me why.

21 MR. NESSIM: The witness who will bring this exhibit  
22 in is the manager of the New Jersey apartment building where we  
23 allege that the defendant lived with his mother. She will  
24 testify that he was banned from the building. They actually  
25 took legal action against his mother initially to evict her

1 because they believed he was living there. And they said after  
2 they were sure that he was living there and took that action,  
3 it went to mediation in which they agreed not to evict her in  
4 return for him not living there, that he was banned from the  
5 building --

6 THE COURT: Why is it relevant that he was banned from  
7 the building? I understand the relevance of the building found  
8 out that he was living there, told the mother, you got to get  
9 him out of here for whatever reason. I presume that was not  
10 because he was a sex-offender, but just because he wasn't on  
11 the lease.

12 MR. NESSIM: That's right, at least initially. And I  
13 think the testimony was that he wasn't on the lease, and that  
14 was the issue.

15 It's relevant for several reasons. First, it  
16 corroborates the witnesses' statements regarding seeing the  
17 defendant at the building, their belief that he was living  
18 there. She's also going to testify that she saw him on  
19 surveillance videos.

20 THE COURT: I understand why the surveillance video  
21 may be admissible. It's the piece of this which I understand  
22 Mr. Diaz to be objecting to -- although I'm not a hundred  
23 percent sure -- is the handwritten Salvador Diaz banned from  
24 building, son of apartment 307, boyfriend of apartment 822.  
25 The bottom piece, I'm not --

1 Do you object to the bottom piece of it and you object  
2 to the surveillance picture itself?

3 (Continued on next page)

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1 MR. DIAZ: No, the whole thing, the entire page.

2 THE COURT: You object to the entire page?

3 MR. DIAZ: The writing at the top and the bottom.

4 THE COURT: OK. Tell me what your objection, if  
5 hypothetically, the handwriting at the top were redacted or  
6 removed so that the only thing that would be in the exhibit is  
7 the picture from the surveillance camera and then the  
8 handwriting at the bottom that says, "Son of apartment 307,  
9 boyfriend of Apartment 822," what is your objection?

10 MR. DIAZ: Yeah, as long as the -- the handwriting on  
11 the top of the page comes out, I have no objection.

12 THE COURT: That's your objection. So address that.

13 MR. NESSIM: So we agree that the document is  
14 relevant and it's relevant --

15 THE COURT: I don't disagree that the document is  
16 relevant. Focus your argument on why from a 403 perspective,  
17 the information at the very top is -- that it's probative value  
18 outweighs its prejudicial import.

19 MR. NESSIM: So the probative value of the text is  
20 that it shows how the defendant even after he was banned  
21 continued returning to the building and continued to returning  
22 to the building with luggage and other things and indicated he  
23 was still living there. It helps to prove the fact he was  
24 living there previously and continued to live there after the  
25 fact.

1 THE COURT: I understand that that piece is relevant.  
2 But why isn't relevant that the building said, you cannot come  
3 back in this building?

4 MR. NESSIM: As I said, to go to the understanding of  
5 the building, that he was living there, but it's also -- the  
6 witness will testify that it's in the regular course of  
7 business for the building when they have someone who they've  
8 determined can no longer return to the building to create forms  
9 like these, they've distributed with the security guards  
10 they've posted in areas where the staff has access to. So in a  
11 prejudicial probative 403 balancing, I guess our argument is  
12 the relevance is the fact that it's posted, the relevance is  
13 the fact that he is banned.

14 THE COURT: But why is that relevant? It's relevant  
15 the fact that he was living there. The fact that the apartment  
16 building wanted him out, why is that relevant to your charge?  
17 I entirely agree that the fact that he was living there. So  
18 the fact that they have their knickers twisted about it, all  
19 that's relevant. Why is the fact that they banned him  
20 relevant?

21 MR. NESSIM: It just completes the story of that  
22 understanding. It's just further proof of their belief, they  
23 just took it to the next step by banning him.

24 THE COURT: I think in the context of this case, the  
25 fact -- the language that says he was banned from the building



1 is the prejudicial import outweighs its probative value. I'm  
2 not going to let you put that in, but, again, you can work with  
3 your witness. The rest of this that they investigated and they  
4 confirmed that he was living in the apartment and they found  
5 out that his mom was living in 307, that his girlfriend was  
6 living in 822, all of that is relevant. It's just the ultimate  
7 fact that they then banned him from the building that I'm not  
8 seeing the probative value.

9 MR. NESSIM: Your Honor, just as a factual matter the  
10 witness will testify that he was told he could not live there  
11 because he wasn't on the lease leave. They told them he could  
12 not return. He continued to return and they posted these in  
13 the building. Even after this point he continued to return.  
14 As a factual matter, that is the facts of how this sort of  
15 developed. The banning from the building or telling him he  
16 couldn't return is sort of an integral part of that story.

17 THE COURT: Why is it more integral than just the  
18 dates? I get that he was told he couldn't live there because  
19 he was not on the lease, maybe this is on some level how you  
20 phrase it. To me testimony that says they told him you cannot  
21 live in this building because you're not on the lease is  
22 different from a flyer that says Salvador Diaz is banned from  
23 the building. So maybe this is a nuance.

24 MR. NESSIM: I think the difference is just it sort of  
25 started as saying you cannot live here, you're not on the

1 lease, but in the face of sort of continued violations of that  
2 statement, that policy developed to the point where flyers --  
3 flyers were made for employees to make that fact clear. So we  
4 do think that it has an independent probative value for that  
5 fact of just the next step there.

6 THE COURT: But, again, why can't you scratch that  
7 itch by testimony that his picture was given to the security  
8 guards and they were informed that Mr. Diaz did not live in the  
9 building and was not supposed to be living in the building.

10 MR. NESSIM: We would prefer to admit the exhibit in  
11 full. I think that would go most of the way, but just to be  
12 clear, is your ruling -- we can redact the Salvador Diaz banned  
13 from the building, but is the witness supposed to avoid using  
14 terms like we banned him from entering the building?

15 THE COURT: Yes. Prep the witness so that the  
16 discussion of banning him as opposed to the discussion that the  
17 security guard -- he was informed, he's not supposed to be in  
18 the building because he's not on the lease. I take it he can  
19 still visit. Did there come a point in time when he was told  
20 he could not even visit the building?

21 MR. NESSIM: Yes.

22 THE COURT: I'm still not sure that that makes it more  
23 probative. There's a way to get all this testimony in to show  
24 he was living in the building without -- I mean, the testimony  
25 that he was banned from the building obviously didn't take

1 because he was still living in the building. So other than  
2 showing that he was stubborn and didn't do what he was told to  
3 do, I'm not sure how that advances your burden of proof on an  
4 element.

5 MR. NESSIM: Understood, your Honor. We would just  
6 ask for some indulgence with leading this witness through this  
7 area.

8 THE COURT: Yes.

9 Mr. Diaz, do you understand what the government is  
10 saying? Because the witness would naturally, it's a woman,  
11 right if she's just naturally telling her story, she's going to  
12 get to the point to say you were banned from the building they  
13 distributed flyers with your name on it saying you're banned  
14 from the building because I don't want that testimony, that's  
15 what you've objected to, they're going to lead the witness  
16 through that, so I don't want to hear an objection on the  
17 grounds that the government is leading, because they're  
18 permitted to lead to get through that piece of this witness  
19 witness's testimony?

20 MR. DIAZ: I don't understand. They're not allowed to  
21 lead the witness.

22 THE COURT: They're not normally allowed to lead. In  
23 this case, this is a ruling that is beneficial to you because  
24 otherwise the witness is likely to blurt out that you were  
25 banned from the building.

1 MR. DIAZ: Yeah, but why can they just tell the  
2 witness not to say that. They already had other witnesses.  
3 They told them not to say certain things that are not part of  
4 the witness.

5 THE COURT: Mr. Diaz, here's the thing. I'm going to  
6 allow them to lead, if you object to them leading and they quit  
7 leading and she says that you were banned from the building  
8 then you get what you got. You objected to the remedy and you  
9 may end up adducing testimony that is negative for you. So I'm  
10 just telling you I will allow them to lead. If you object,  
11 then they're not going to lead and you run the risk of getting  
12 out exactly the testimony that you're trying to avoid.

13 MS. KELLMAN: May we have just one minute, Judge.

14 THE COURT: Sure.

15 MR. DIAZ: In that event, I ask that you would  
16 instruct them to tell the witness not to blurt this out.

17 THE COURT: Mr. Diaz, they know what my ruling is.  
18 The reason that they requested to lead her through it is  
19 because based on all of their prep and the fact that you were,  
20 in fact, banned from the building, there's a high degree of  
21 likelihood that if they don't lead the witness, that's going to  
22 come out. So you've got my ruling, I'm not going to keep  
23 arguing it. OK.

24 MR. DIAZ: Very well.

25 THE COURT: Anything else that we can dispense of

1 before I give you ten minutes and we start talking about the  
2 charge?

3 MS. TARLOW: No, your Honor.

4 THE COURT: Mr. Diaz, anything else from you?

5 MR. DIAZ: All these photos from Government Exhibit  
6 50.

7 THE COURT: Government Exhibit 50.

8 MR. DIAZ: Through 57 through 58. I object to those  
9 on relevance.

10 THE COURT: All right. What are these?

11 MR. NESSIM: We might have gotten a little photo happy  
12 and mark happy with these, your Honor, but they are photos of  
13 the building in New Jersey where his mother and he live.

14 THE COURT: Is this the one that we were just talking  
15 about?

16 MR. DIAZ: Yes.

17 MR. NESSIM: This is the same building. So they're  
18 photos of the exterior and a few parts of the interior of the  
19 building and also it's on a beachside location and there are a  
20 few photos of the beach which we do not plan to admit. Of  
21 these, we plan to offer only four of these and they are sort of  
22 a broad exterior photo of the building, a photo of the main  
23 entrance to the building and a photo of the back entrance, both  
24 from the interior and the exterior.

25 THE COURT: And why are you putting the pictures of

1 the building in?

2 MR. NESSIM: They're relevant because the witness from  
3 this building will testify as to where she sits in relation to  
4 the entrance, various physical spaces in the building,  
5 observing the defendant on surveillance video enter into the  
6 backdoor, enter into the backdoor at times when she wasn't on  
7 the job, and otherwise accurate representations of the  
8 apartment building where allege he lived for many months.

9 THE COURT: What's your objection?

10 MR. DIAZ: I don't see the relevance.

11 THE COURT: Well, he's just explained the relevance.  
12 Were you listening to him?

13 MR. DIAZ: Yes.

14 THE COURT: So respond to what he said.

15 MR. DIAZ: Well, I don't think it proves what he was  
16 trying to say.

17 MS. KELLMAN: Can we have just a moment, Judge.

18 MR. DIAZ: Looking through the picture, I may be able  
19 to accept some of it, showing pictures of the entrances, but  
20 that doesn't explain all the pictures -- of the 10 year-old  
21 picture.

22 THE COURT: Here's what we're going to do. We'll do  
23 them one by one tomorrow at trial. So the government will  
24 figure out exactly what they're going to put into evidence. If  
25 you're going to object, when they offer the document and I say,

1 Mr. Diaz, any objection, that's your opportunity to object.

2 MR. DIAZ: Understood.

3 THE COURT: If you say no objection and I admit it,  
4 then it's too late, you don't get to go back. There are no  
5 backsies. OK? So we'll deal with them on a one-by-one basis  
6 tomorrow.

7 Anything else?

8 MS. TARLOW: Not from the from the government, your  
9 Honor.

10 THE COURT: 10 minutes, and be ready to discuss the  
11 charge.

12 (Recess)

13 THE COURT: Everybody has a copy of the charge. So  
14 who has an objection or a suggestion? What's the first page  
15 that's affecting?

16 MR. NESSIM: Our first page is eight.

17 THE COURT: Your first page is eight.

18 MR. NESSIM: I'm sorry. Page five. Excuse me.

19 THE COURT: Mr. Diaz, do you have anything on the  
20 charge before page 5?

21 MR. DIAZ: No, I do not, your Honor.

22 MR. NESSIM: Page 5. So after.

23 THE COURT: Just what line.

24 MR. NESSIM: Between line 8 and 9, so before the  
25 presumption of innocence, we would add that a small section be

1 added about consideration of punishment, we have preferred  
2 language that we might have submitted that says, "I also  
3 caution you that under your oath as jurors, you cannot allow to  
4 enter into your deliberations any consideration of the  
5 punishment that may be imposed upon a defendant if he is  
6 convicted. The duty of imposing sentence in the event of  
7 conviction rests exclusively with the Court and the issue of  
8 punishment may not affect your deliberations as to whether the  
9 government has proven a defendant's guilt beyond a reasonable  
10 doubt."

11 THE COURT: Mr. Diaz.

12 MR. DIAZ: No objection.

13 THE COURT: Well, I object. It's about a thousand  
14 words to say don't consider punishment. I'll add a sentence  
15 that will be very short that will basically say don't consider  
16 punishment.

17 Next.

18 So on page 6, the bracketed material on line 23. So  
19 far no documents have been shown to anyone to refresh their  
20 recollection. I'm sort of skeptical that that's going to  
21 happen. Do you anticipate that you're going to have witnesses  
22 who are going to need to be refreshed?

23 MR. NESSIM: We don't anticipate it.

24 THE COURT: Mr. Diaz, I'm likely to drop that, unless  
25 it becomes a live issue where someone puts a document in front



1 of you somebody, that will come out for the time charge.

2 Then on page 7, so far I haven't seen any  
3 stipulations. Are there any stipulations between the parties?

4 MS. KELLMAN: No.

5 MR. NESSIM: There are not.

6 THE COURT: Is that likely to change?

7 MS. KELLMAN: No.

8 THE COURT: Mr. Diaz.

9 MR. DIAZ: No, your Honor.

10 MS. KELLMAN: It's instinct. I'm sorry.

11 THE COURT: That will come out. Lines 15 through 19  
12 will be deleted.

13 What's your next comment from the government?

14 MR. NESSIM: We believe that Section K summary charts  
15 should be omitted. We don't plan to offer any summary charts.

16 THE COURT: That was my next as well.

17 Are you going to have any charts, Mr. Diaz?

18 MR. DIAZ: Charts?

19 THE COURT: Charts.

20 MR. DIAZ: No.

21 THE COURT: Charts come out. Redactions will stay in.  
22 The brackets will come out because some of the documents have  
23 been admitted in redacted form. I noticed that, and I think  
24 this is probably based on the fact that you got objections very  
25 late. You put a document in today that had -- that reflected

1 Mr. Diaz's New York driver's license number that was largely  
2 redacted, but it's a white redaction so it doesn't look  
3 redacted. I don't know if that was intentional, but this talks  
4 about sort of blacked out.

5 MR. NESSIM: Most of our redactions are in white to  
6 limit the imprints if something was redacted.

7 THE COURT: Some make sense. Whether it makes sense  
8 for a driver's license number, you might want to think about  
9 it. I understand why the number is redacted down to the last  
10 four digits but what it looks like is a bogus number. When I  
11 looked at it, I said that can't be right, but then I realized  
12 it's a redaction.

13 MR. DIAZ: Can we redact the whole thing.

14 THE COURT: The whole driver's license number?

15 MR. DIAZ: Yes.

16 THE COURT: I assume you're going to use that for  
17 proof of anything, the actual driver's license number?

18 MR. NESSIM: That particular point actually we could  
19 redact the whole number. We could do that or we can take  
20 another look at our exhibits and resubmit any that have been  
21 redacted in that way with black redactions to indicate  
22 something has been omitted.

23 THE COURT: Make sure Mr. Diaz sees and that there's  
24 no objection to it, and otherwise put it on the record that  
25 you've changed the way that you're redacting them.

1 Page 11, Mr. Diaz, as you see under Section M, as in  
2 Mary, there are two separate paragraphs.

3 MR. DIAZ: OK.

4 THE COURT: One that will be used if you do not  
5 testify and one that will be used if you do testify.

6 MR. DIAZ: Very well.

7 THE COURT: Immediately after section M, I'm going to  
8 insert the information that was just sent to you, the paragraph  
9 about the defendant representing himself. So it will be  
10 whatever the next letter is. I don't think it's going to be M  
11 because we deleted some.

12 Any objections to this language?

13 MR. DIAZ: No, Judge.

14 THE COURT: Obviously on the last sentence if you  
15 don't testify, that will come out.

16 Next issue or objection from the government.

17 MR. NESSIM: Page 12, line 2.

18 MR. DIAZ: Yes, I have something on page 11.

19 THE COURT: What do you have?

20 MR. DIAZ: Line 24.

21 THE COURT: Line 24, yes.

22 MR. DIAZ: I object to that on the grounds that that's  
23 not an element of the offense.

24 THE COURT: OK. You have preserved your objection.  
25 Your objection is overruled.

1 MR. NESSIM: Line 2, we would ask, and this sort of  
2 ties into an objection we have to the third element, the charge  
3 for the third element, that we omit -- we change keep sex  
4 offender updated and current to update his sex offender  
5 registration to conform with the language of 2250.

6 THE COURT: Can I see 2250. I thought it requires  
7 both, updated and current. Hold on a second.

8 Fails to register or update.

9 MR. NESSIM: I think it's 34 U.S.C. 2913, I think.

10 THE COURT: Picks up the current requirement.

11 MR. NESSIM: So we have some proposals of tweaks to  
12 the third element that address our concern here.

13 THE COURT: Any objection?

14 MR. DIAZ: The same as before on line 4 and 5 about  
15 the requirement to register to travel in interstate commerce.

16 THE COURT: Same objection?

17 MR. DIAZ: Anything in this document that deals with  
18 that, I would object.

19 THE COURT: You got it. So you want to change on line  
20 2 to just change it to "and keep his sex registration updated"?

21 MR. NESSIM: Or "and update his registration," that's  
22 not a strong preference.

23 THE COURT: Say that again.

24 MR. NESSIM: We don't have a strong preference between  
25 the two. The statute is -- let me just put it -- to register

1 or update a registration.

2 THE COURT: To register or update. Right. So he  
3 knowingly failed to register or knowingly failed to keep his  
4 sex offender registration updated.

5 MR. NESSIM: Yes.

6 THE COURT: So I'll delete, "and current."

7 Do you understand that, Mr. Diaz?

8 MR. DIAZ: I'm sorry?

9 THE COURT: So on line 2, page 12, I'm going to  
10 delete, "and current."

11 MR. DIAZ: Very well. Yes, I do.

12 THE COURT: OK. Next is the objection to on line 4,  
13 that he traveled in interstate commerce. That objection is  
14 overruled.

15 Next.

16 MS. KELLMAN: Line 4 and 5.

17 THE COURT: Yes.

18 MR. NESSIM: Next is at the end of the second element  
19 at line 7.

20 THE COURT: On page.

21 MR. NESSIM: On page 13, excuse me, we would ask a  
22 line be added that the government is not required to prove that  
23 he traveled in interstate commerce with the intent to evade  
24 registration requirements.

25 THE COURT: So I try not to charge what doesn't have

1 to be proven and try, instead to focus on what does have to be  
2 proven. So what would you like, tell me again where you want  
3 this.

4 MR. NESSIM: At the end of interstate commerce, our  
5 concern is that because it's being charged as no consecutive  
6 series of steps that the jury might be under the false  
7 impression that they need to find the interstate commerce was  
8 for the purpose of the third element, which is to not register.  
9 So we just want to make clear to the jury that it's the facts  
10 travel in interstate, there's no intent required for that  
11 travel.

12 THE COURT: Overruled.

13 Did you have something before then?

14 MR. DIAZ: Well, I'm a little confused then. Now he's  
15 saying there's no requirement to travel.

16 THE COURT: No, no, first off, I'm not adding what he  
17 wants. What he wanted was the travel doesn't have to be with  
18 an intent to evade requirements. That is a correct statement  
19 of the law but I'm not adding it. It's not necessary.

20 MR. DIAZ: But do I object, again, to line 19 and the  
21 whole --

22 THE COURT: You object to the entirety of element two?

23 MR. DIAZ: Element two.

24 THE COURT: Your objection is overruled.

25 MR. DIAZ: No one out of three?

1 THE COURT: No one out of three.

2 MR. NESSIM: Our next objection is to element three  
3 starting on line 8. We proposed some small modifications which  
4 might be easier to see in this tracked changes document, and it  
5 reflects the update and keep current language and it also seeks  
6 the additional of the three-daytime to register and the failure  
7 to register as well as the failure to update.

8 THE COURT: But your change at the top doesn't make  
9 any sense because there are two separate requirements, there's  
10 a registration requirement and there's a keep current. So to  
11 me when you start talking about change in the failure to  
12 register, it starts to become very confusing. I sort of went  
13 around and around on this in the drafting of how to make it  
14 clean.

15 So he had a duty to register in New Jersey. If the  
16 jury finds that he moved to New Jersey, he had a duty to  
17 register, period, end. He never registered, that would satisfy  
18 this obligation. He separately had a duty to stay current,  
19 which triggers, there's a three-day obligation there, but it  
20 seems to me that putting that three-day obligation into the  
21 failure to register is just to confuse things.

22 MR. NESSIM: So I think that it is confusing and the  
23 criminal enforcement provision doesn't totally square with the  
24 sort of registry requirements provision in title 34.

25 So our understanding of what 2250 requires is it

1 criminalizes the failure to register or update a registration  
2 as required by SORNA.

3 THE COURT: I agree.

4 MR. NESSIM: And we believe based on reading the  
5 statutes and the provisions how they play together and the  
6 attorney general guidelines under section 10, which is failure  
7 to keep current and sort of explication of what that means and  
8 changes of residency requirements that failure to register and  
9 update within the meaning of 2250, has a distinct meaning from  
10 the general registration requirements and keeping the  
11 registration current as set forth in 2913. I agree it's odd.

12 And in our reading the failure -- SORNA is implemented  
13 by each jurisdiction setting up these sex offender registries.

14 THE COURT: Correct.

15 MR. NESSIM: Failure to register means you have an  
16 obligation to register in a state which you have not had a  
17 existing registration. So you move to New Jersey, you need to  
18 register there. If he moved within New York State, you have a  
19 duty to update your New York State registration. Both of our  
20 updates in our reading of 2913 fall within keeping the  
21 registration current, and it's odd because current and updating  
22 are synonyms generally.

23 But what subsection (c) asks for in 2913 is within  
24 three business days of a change, you go to at least one  
25 jurisdiction which you're required to register and inform that



jurisdiction of all changes required. It doesn't specify whether that's considered a new registration or an updated registration. The attorney general guidelines does seem to draw the distinction between under keeping the registration current to being a new registration in a state where you move to anew and an updated registration in a state which your registration exists but must be updated.

So our reading of it is the 2250 refers to whether it's a new or existing registration that needs to be changed, but both can fall within keeping the registration current, meaning, I guess the failure to register can also fall within the initial registration requirement. It's not totally clear, but we don't believe that the update in 2250 means exactly current in 2913, if that makes sense.

THE COURT: You don't believe that the "update" is the same as "keep current"?

MR. NESSIM: Right. I think the one way that you can satisfy your obligation to keep current is by filing a new registration in the jurisdiction in which you did not previously have reporting obligation.

THE COURT: Right.

MR. NESSIM: So the update in 2250 refers to a variety of keeping current in which your obligation is just to update your registration with the state.

THE COURT: Right, but whether he would have satisfied

1 his obligation if he had registered in New Jersey, he might  
2 have satisfied his obligation if he's an informed New York that  
3 he had moved to New Jersey, because this seems to suggest that  
4 that so long as he appears in one jurisdiction involved, he  
5 satisfies his obligation.

6 MR. NESSIM: Well, I think that's modified by sub (a),  
7 which is the in general, and based on *Nichols* seems to say that  
8 you have a registration obligation in only the jurisdictions  
9 which you reside, are employed or are a student. So if  
10 New York was not one of those jurisdictions, then he wouldn't  
11 have a duty to update his registration in New York. If, for  
12 example, he moved to New Jersey but continued working in  
13 New York, he would have an obligation in both places and his  
14 update in New York may have satisfied (c).

15 THE COURT: But if we're going to charge this then we  
16 have to charge all of that. That was part of what I found to  
17 be is the difficulty of it is, if he was working in New York,  
18 as I've now seen the evidence and there's no declared  
19 employment, but the jury could find, perhaps that he was  
20 working and it wasn't on the form. So I'm not -- I guess what  
21 I'm saying is I'm not entirely sure that this makes it any  
22 clearer or is really going to be particularly helpful to the  
23 jury. Your latter changes, I think sort of to reside refers to  
24 a place that a person calls his home, even if the person has no  
25 home or fixed address. Is there any objection to that? Do you

1 see that in the middle of the paragraph?

2 MR. DIAZ: Yes, no objection.

3 THE COURT: That I think makes sense and then sentence  
4 at the end, "A person may reside in more than one place and  
5 must include in his registration each place where he resides,"  
6 is also a correct statement of law, any objection to that?

7 MR. DIAZ: No, no objection.

8 MS. KELLMAN: And I when I asked Mr. Santiago to work  
9 on this, I wasn't aware that he was a state sex law prosecutor.

10 THE COURT: There you go.

11 MR. DIAZ: Your Honor, with respect to that, can we  
12 spend some more time looking at that time and give back to you.

13 THE COURT: No, this is the charge conference. That's  
14 why I gave you the charge before. Admittedly, this wasn't in  
15 it.

16 Any objection?

17 MR. DIAZ: No, no objection, your Honor.

18 THE COURT: I'm going to also add that.

19 So the only issue is whether at the very beginning of  
20 that section, I add at the end of the first sentence, "Within  
21 three business days of the change." That I will not make  
22 because there's no change. I mean the sentence doesn't work  
23 that way. So under federal law, "A sex offender must register  
24 in each state which he resides, is employed, and is a student  
25 within three business days of the change," what does that refer

1 to? What you really mean is any change in those things, but  
2 that's exactly what the next paragraph discusses and discusses  
3 it, I think more clearly.

4 MR. NESSIM: I think the concern is there's no timing  
5 requirement for a failure to register there, which I think  
6 whether it's a new registration or updated recommending  
7 restoration, that keeping the registration current three-day  
8 language would apply to both. So maybe it's to move up the  
9 clearer language and keeping in a registration updated -- the  
10 keeping the registration current requirements would map on to  
11 both a new or updated registration assuming you need to make  
12 one or the other.

13 THE COURT: Agreed.

14 MR. NESSIM: So I guess our concern is -- and maybe  
15 it's not phrased properly and maybe it needs some of the  
16 supporting language that's now in the section that follows --  
17 but that the jury shouldn't be under the false impression that  
18 if you're making a new registration you have an unlimited  
19 amount to time to do that.

20 THE COURT: Understood. That may require a second  
21 sentence to get to that.

22 And the obligation to register is within three days,  
23 right, under the currency obligation, under 2913, the  
24 obligation to register in the state where you live, work, or go  
25 to school is before completing a sentence of imprisonment and

1 that's not really relevant here because that was done. There's  
2 no contest that he did not register upon completing it. So the  
3 issue is he has satisfied his initial registration requirement.

4 MR. NESSIM: Right, it would be the same sub (c), "A  
5 sex offender shall not later than three business days after his  
6 change."

7 (Continued on next page)

1 THE COURT: Your failure to register, you're not  
2 proving a failure to register. This case is not about a  
3 failure register. It's bout a failure to update. You've just  
4 proved he registered. He did his initial registration. I  
5 mean, if anything, the failure to register should be this: He  
6 was required to initially register before pleading his sentence  
7 -- which the government has just proved to a fairly well that  
8 he did.

9 THE DEFENDANT: And kept it up later while I lived in  
10 New York.

11 THE COURT: You don't get brownie points for that.  
12 Because then you quit --

13 THE DEFENDANT: But I wasn't living there anymore.

14 THE COURT: Go ahead.

15 MR. NESSIM: So, 2250 requires failure to register,  
16 failure to update registration, which unfortunately doesn't  
17 square perfectly with keeping current. But we are charging a  
18 failure to register, because it's a failure to register in the  
19 new jurisdiction. Failure to register in New Jersey, that's a  
20 sub --

21 THE COURT: But that's really the same thing as the  
22 failure to update his registration, right? Because that update  
23 is due -- whether it was due -- you're saying he didn't  
24 register in New Jersey. He also didn't update his registration  
25 by registering in New Jersey.

1 MR. NESSIM: So, I think the question is trying to  
2 talk about a national sex-offender registration, or does it  
3 require registration in each jurisdiction? So, there's a way  
4 of thinking about registering as if each new jurisdiction is a  
5 new registration. And while you are keeping your registration  
6 current within the meaning of 2250 -- and the attorney general  
7 guidelines, which I'm trying to pull up, under keeping the  
8 registration current, in effect, registering a new -- it's not  
9 initial registration; it's registration current. And, it is  
10 confusing. Keeping the registration current -- I'm reading  
11 this from my phone if that's okay.

12 THE COURT: Uh-huh.

13 MR. NESSIM: The change of residence section, there's  
14 a section, sub (a).

15 THE COURT: What regulation is this?

16 MR. NESSIM: So, this is the national --

17 THE COURT: CFR what?

18 MR. NESSIM: It's the smart guidelines --

19 THE COURT: The smart guidelines?

20 MR. NESSIM: Yes. National Guideline for Sex-offender  
21 Registration. I have the cite back in my office. But I will  
22 inform the Court and parties as soon as I'm back there.

23 But it discusses some of these terms. And under Roman  
24 numeral V, keeping the registration current, there's a section  
25 on changes of name, residence, employment or school attendance.

1 And if you go to that section -- we're happy to put this in a  
2 letter if that would be better.

3 THE COURT: Well, go ahead.

4 MR. NESSIM: Okay. So, on page 49, keeping the  
5 registration current section begins, and it states that under  
6 residence jurisdiction or changes of name, residence,  
7 employment or school attendance, "Each jurisdiction must  
8 require a sex-offender who enters the jurisdiction to reside or  
9 who is registered in the jurisdiction as a resident and changes  
10 his or her name or place of residence within the jurisdiction  
11 to appear in person to register or update the registration  
12 within three the business days. Also, each jurisdiction in  
13 which a sex-offender is registered must" -- and then it lays  
14 out other requirements.

15 So, the attorney general guidelines, which sort of  
16 delegates the interpretation process too, seems to draw this  
17 distinction between the same, keeping registration current,  
18 changing residence, sex-offender moving to a new state is  
19 registering. A sex-offender who is in his existing state is  
20 updating.

21 THE COURT: Except you're charging him with failing to  
22 update based on the fact that he did not register in New  
23 Jersey, right? That's the theory of your case.

24 MR. NESSIM: I think the theory of our case is we're  
25 charging him with failure to register by not updating in New



1 Jersey.

2 THE COURT: Correct. That's what I just said.

3 MR. NESSIM: Well, but failing to register, not to  
4 update. It's the failure to register promptly --

5 THE COURT: So, you don't want the failure to update?

6 The problem is, as a factual matter in this case, it's  
7 the same thing. My law clerk and I have discussed this ad  
8 nauseam. Right? In your particular fact scenario, it's really  
9 the same thing.

10 Now, you are right that the statute says both. And  
11 so, I can charge both. But, I'm not sure what you're getting  
12 out of this. But, okay. Here is what I will do. I understand  
13 your point. I'm going to add a sentence after -- it will be on  
14 my version of the charge, Mr. Diaz, the version with numbered  
15 lines. It will be after line 13, on page 13. I'm going to add  
16 a sentence that says that: If the state of residence,  
17 employment or education changes, the sex-offender has three  
18 days to register in the new location.

19 No objection to that, correct?

20 THE DEFENDANT: No objection.

21 THE COURT: Okay. That scratches that itch. All  
22 right. Again, I have a feeling that we're going to end up with  
23 notes from the jury on this, but I can't say that what we've  
24 got here is not right. I think it is right. It is a  
25 metaphysical difference in this case, at best.

1           Okay. Any objection to the red changes, Mr. Diaz, in  
2 the failure to update section?

3           Actually, what I would like to say is: Federal law  
4 also requires a sex-offender to promptly update his  
5 registration. Three days strikes me as promptly.

6           Any objection?

7           THE DEFENDANT: But isn't it more accurate just to say  
8 "three days." Promptly, they may indicate one day or two days.

9           THE COURT: Well, that's the next sentence. So,  
10 promptly would mean: This means that the sex-offender must  
11 report any change of name, residence, etc., within three  
12 business days of the change.

13          MR. NESSIM: No objection to "promptly."

14          THE COURT: Okay. What's the next?

15          MR. NESSIM: On the omission of the current language  
16 that exists --

17          THE COURT: Yes.

18          MR. NESSIM: -- we'd like to admit that to better  
19 conform to 2250.

20          THE COURT: Right. So, I'm accepting your proposal.  
21 What's the government's next change?

22          MR. NESSIM: Page 14, at line 16. We'd like to add,  
23 "Ignorance of the law is not a defense."

24          THE COURT: A, you've proven fairly well that he's  
25 aware of the law. So, it's not necessary. And he's not

1 defending --

2 Mr. Diaz, is your defense going to be you were unaware  
3 that you were supposed to be registered?

4 THE DEFENDANT: No.

5 THE COURT: I didn't think so. If he changes his  
6 defense, I'll consider it. But that's not his defense.

7 His defense is that he's in the army and he was in the  
8 navy.

9 THE DEFENDANT: Well, you know part of my defense is  
10 that -- I put in the motion, but you threw it out. Is there is  
11 no venue --

12 THE COURT: We're about to get to venue.

13 THE DEFENDANT: Yeah. Well, I see that. But there is  
14 no venue in this district, and interstate travel is not part of  
15 the elements for a federal offender. It's corroborated by  
16 every case.

17 THE COURT: Well, not every case. But I understand  
18 your argument. I have rejected that argument.

19 THE DEFENDANT: I just wanted to throw it in. Maybe  
20 you change your mind.

21 THE COURT: Not likely.

22 MR. NESSIM: Very briefly.

23 He is suggesting cross, you know, things like -- this  
24 isn't a federal form, sort of suggesting that it might be what  
25 state requires, but not the federal one, to the extent that

1 that continues or becomes a more sizable defense, we think it's  
2 appropriate under those circumstances as well.

3 THE COURT: All right. Well, you can reraise the  
4 issue after the other case is in. First of all, I think all of  
5 those are, for the most part -- the question wasn't  
6 well-phrased, so the objection was sustained. I think he did  
7 get in that these were state forms, and they are indeed state  
8 forms.

9 Okay. Venue. The reason that venue is in brackets,  
10 Mr. Diaz, is that I always raise this with the defendant and  
11 give them the opportunity to say that they do not want the jury  
12 charged on venue. And the reason I do that is venue only has  
13 to be proven by a preponderance of the evidence, which is a  
14 lower standard of proof. So, some defense attorneys don't  
15 particularly want the jury to be charged on what is a lower  
16 standard of proof out of concern that the jury may get confused  
17 and actually apply that lower standard of proof to the entire  
18 case. But it's entirely up to you. If you want venue charged,  
19 and given the fact that your defense that I'm not letting you  
20 raise is in part based on venue, I assume you do want it. But  
21 it's up to you.

22 You want me to charge the jury on venue or not?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Okay. So, venue will stay in.

25 THE DEFENDANT: I mean, I think that you should

1 address the difference between preponderance of the evidence  
2 and reasonable doubt.

3 THE COURT: You've got the charge. This is how I  
4 stress it. You've read it. It's a paragraph -- or it's not a  
5 paragraph. But I say that it's a different standard. I tell  
6 them what the preponderance standard is.

7 THE DEFENDANT: You might have to tell me sometimes.

8 THE COURT: Well, read it. You can read. It's on  
9 page 15. I'll read it.

10 THE COURT: Anything else from the government?

11 MR. NESSIM: One more thing.

12 At line 13, after variance --

13 THE COURT: What page?

14 MR. NESSIM: On page 15. Sorry.

15 We would ask that we add in the section regarding  
16 statements of the defendant. We're introducing statements he  
17 made post-arrest. Sort of, you're not to consider entertaining  
18 these statements whether or not you approve of them. we have  
19 proposed language, which I'm happy to read or submit.

20 THE COURT: Okay.

21 MR. NESSIM: And the last few bullet points are more  
22 accurate depending on the arguments raised by defense.

23 THE COURT: Yeah. I don't see any of those being real  
24 issues in this case.

25 THE DEFENDANT: It's just vague.

1 THE COURT: Okay. So, Mr. Diaz, the proposal is to  
2 charge the jury -- this is the government's proposal, "There  
3 has been evidence that the defendant made certain statements."

4 THE DEFENDANT: Okay.

5 THE COURT: Do you have any objection to that?

6 THE DEFENDANT: No, I do not.

7 THE COURT: All right. Then it says, "Evidence of  
8 these statements was properly admitted in this case and may be  
9 properly considered by you."

10 That's really just a restatement of the fact that I  
11 allowed the statements in.

12 THE DEFENDANT: Right.

13 THE COURT: So, you don't have an objection to that  
14 sentence, do you?

15 THE DEFENDANT: No.

16 THE COURT: Next sentence, "You are to give the  
17 evidence of such statements such weight as you feel it deserves  
18 in light of all of the evidence."

19 That basically says: Take it for what it's worth.

20 Any objection to that?

21 THE DEFENDANT: Now, that's what I have a little bit  
22 of trouble with because it seems like it's unnecessary to begin  
23 with.

24 Well, no. I find that correct because it says, "In  
25 light of evidence." But over here, then --

1 THE COURT: We haven't gotten there yet.

2 Do you have any objection to that sentence?

3 THE DEFENDANT: No. No objection.

4 THE COURT: Okay. Then the next sentence --

5 THE DEFENDANT: Wait. I'm sorry. Maybe it's  
6 properly. I have some objection to the way that -- so, I don't  
7 think it's properly admitted.

8 THE COURT: Well, you didn't even move to suppress  
9 your statements. There was no motion to suppress in this case.

10 THE DEFENDANT: I did.

11 THE COURT: No. There was no motion to suppress. I  
12 mean, I presume you were Mirandized. Were you --

13 THE DEFENDANT: Well, no. No. You're right?

14 THE COURT: Is the evidence that he was Mirandized?

15 MS. KELLMAN: Yes.

16 MR. NESSIM: Yes, your Honor.

17 THE DEFENDANT: No the issue was -- the evidence was  
18 suppressed. Part of the --

19 THE COURT: That's a different problem.

20 Okay. So, frankly, I guess I'm not sure why anything  
21 more than evidence of these statements was properly admitted in  
22 this case and may be --

23 THE DEFENDANT: Considered.

24 THE COURT: And may be considered by you. Why do we  
25 need anything more than that?

1 MR. NESSIM: Yeah, that's fine.

2 THE COURT: So, we'll just stop it there.

3 So, the charge will be: There has been evidence that  
4 the defendant made certain statements. Evidence of these  
5 statements was properly admitted in this case and may be  
6 considered by you.

7 MS. KELLMAN: That's good.

8 THE COURT: And I'll put that -- you want that after  
9 variance? Is that where you're proposing?

10 MR. NESSIM: It's our proposal. But we --

11 THE COURT: That's fine. Okay. Anything further?  
12 Any more additions?

13 MR. NESSIM: Not from us.

14 THE COURT: How about you, Mr. Diaz? Any other  
15 objections or proposals?

16 THE DEFENDANT: Well, I'm still back on this part  
17 about the language in there.

18 THE COURT: "In there" doesn't mean anything. You  
19 have to give me a page and a line.

20 THE DEFENDANT: Well, I'm sorry.

21 THE COURT: What page?

22 THE DEFENDANT: Page 15, paragraph line 5.

23 THE COURT: Yes. This is the trial one.

24 THE DEFENDANT: Right. Because now it's saying that  
25 travel interstate began or continued in the southern district



1 of New York?

2 THE COURT: Correct.

3 THE DEFENDANT: And, again, that's that's going back  
4 to the law, is that --

5 THE COURT: You don't think that's a correct statement  
6 of the law?

7 THE DEFENDANT: No. Because there was nothing illegal  
8 about leaving New York.

9 THE COURT: About leaving New York?

10 THE DEFENDANT: Correct.

11 THE COURT: That is correct. There was nothing  
12 illegal about leaving New York.

13 JUROR: So, how can they claim that my travel began in  
14 New York and -- within the context of venue, where is the  
15 evidence in that, that I did anything illegal in New York,  
16 which I didn't?

17 THE COURT: Well, in this particular case, what I'm  
18 charging the jury is that if your interstate commerce, that is  
19 your interstate movement, began, ended or traveled through this  
20 state, this district, then venue in this district is proper.  
21 That's my ruling.

22 THE DEFENDANT: Okay. I understand.

23 THE COURT: Okay.

24 MR. NESSIM: Your Honor, I said there was nothing  
25 further, and there isn't. But just to flag for the record that

1 in response to defense arguments for evidence, we might request  
2 ultimately to add charges on particular investigative  
3 techniques not being required, the preparation of witnesses  
4 being a normal part of litigation, how to call witnesses, being  
5 equally available to both sides, and how to weigh character  
6 evidence.

7 THE COURT: Okay. And if the case takes that sort of  
8 a turn, we'll discuss that before the --

9 THE DEFENDANT: Well, your Honor.

10 THE COURT: -- before the charge is final, final,  
11 final.

12 Yes.

13 THE DEFENDANT: Back on that. I do find -- back on  
14 line five of page of 15 -- well, line six -- I do object to the  
15 fact that it says that the interstate commerce began, continued  
16 or -- because as I said, I don't believe that that is the law.

17 THE COURT: Okay.

18 THE DEFENDANT: So, I do object to that.

19 THE COURT: You've already objected, and I've already  
20 overruled your objection.

21 THE DEFENDANT: All right. Very well.

22 THE COURT: So, on line 18, I've bracketed off -- the  
23 exhibits are going to be loaded onto a laptop. You have so few  
24 documents. Is there any reason why we can't give them to them  
25 in a binder? Jurors have trouble finding the exhibits on a

1 laptop.

2 MR. NESSIM: We can give them a binder.

3 Any objection to that in the way of proceeding,  
4 Mr. Diaz?

5 THE DEFENDANT: No.

6 THE COURT: What that's going to mean is, the  
7 government probably -- if you can get it to him, sort of  
8 tomorrow or before lunch -- is going to give you the binder  
9 that will be given to the jury and is going to go back into the  
10 jury room with the jury. You need to look through the binder  
11 of documents carefully. Make sure everything that they've got  
12 in there has actually been admitted into evidence and that the  
13 redactions that have been discussed are, in fact, made on the  
14 documents that are in the binder, because that's what the jury  
15 is going to have. Okay?

16 THE DEFENDANT: Very well.

17 THE COURT: Okay. So, we'll just change that to say  
18 we're just sending the old-fashioned way.

19 Anything else from the government?

20 MR. NESSIM: No.

21 THE COURT: Anything else from the defense, Mr. Diaz?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Okay. That's it. We'll get you another  
24 version either tonight or first thing in the morning. But it  
25 will be red-lined against this version, so you'll be able to

1 see the changes that are made.

2 Do you think we're going to finish by lunch?

3 MR. NESSIM: I think if we don't, it will be  
4 immediately after lunch. There's a good chance we'll finish by  
5 lunch.

6 THE COURT: Okay. I'll ask you again tomorrow, but  
7 assuming you testify, do you have a sense of how long your  
8 testimony is going to be?

9 THE DEFENDANT: No more than an hour or two, maybe.

10 THE COURT: An hour is a very long time. I can't  
11 imagine you're going to talk for an hour.

12 THE DEFENDANT: Not the way I talk.

13 THE COURT: I know you talk slowly, but still.

14 THE DEFENDANT: I can't guess at this because I have  
15 no experience.

16 THE COURT: Okay. Except that, if you're going to  
17 testify, Mr. Diaz, you really need to sort of rough out what  
18 you're going to say.

19 THE DEFENDANT: Yes.

20 THE COURT: Because I'm not going to allow an  
21 unstructured, unorganized, two-hour monologue in front of the  
22 jury. Okay? And as indicated, you need to start each  
23 paragraph with a topic sentence --

24 THE DEFENDANT: Topic sentence.

25 THE COURT: -- so that the government knows what

1 you're about to say.

2 THE DEFENDANT: Very well.

3 THE COURT: So, for example, you opened on you were a  
4 CPO in the navy, everybody understood you to be an expert in  
5 communications. So, if you're testifying, you might say: Now  
6 I'm going to talk about my experience in the navy. Then they  
7 know that that's what you're about to talk about. Okay?

8 THE DEFENDANT: Very well.

9 MS. KELLMAN: Just one minute, your Honor.

10 THE COURT: Let me finish my thought. Then I can give  
11 you as much as time as you want.

12 So, my plan then is for everybody to -- even if  
13 Mr. Diaz testifies tomorrow, I think there's a better than even  
14 possibility that you can sum up tomorrow. So, that would be my  
15 goal, to have you sum up tomorrow. Depending on what time we  
16 finish, we'll either break or I'll charge him. But my guess is  
17 I'm going to charge him Wednesday morning.

18 MS. KELLMAN: Judge Ammons has a plan for me Wednesday  
19 morning at 10 o'clock.

20 THE COURT: If all we're doing is charging the jury.  
21 I don't think that will be a problem.

22 MS. KELLMAN: One question. In terms of  
23 cross-examination, if Mr. Diaz were to testify, would the  
24 government be entitled to cross-examine him about the  
25 underlying sexual offense?

1 THE COURT: Do you want to be heard on that?

2 MR. NESSIM: Your Honor, when you said we could not  
3 bring in his prior offense, we did leave the door open as to  
4 whether if he misrepresents the factual circumstances of that  
5 conviction, whether we could cross-examine him on that.

6 THE COURT: Correct.

7 MR. NESSIM: If he does do that, we might pursue that  
8 line of cross. Also if, you know, he talks about his career in  
9 the navy, and how decorated it was, then we may also  
10 cross-examine him on the fact that he was dishonorably  
11 discharged.

12 THE COURT: He was dishonorably discharged because of  
13 this offense, right?

14 MR. NESSIM: Right. I think we otherwise plan to -- I  
15 mean obviously abide by the order, but there are those areas I  
16 think we might --

17 THE COURT: Okay. So, what I'm hearing the government  
18 saying is that if he opens the door, they're going to want to  
19 go through it. But if his testimony doesn't relate to the  
20 underlying facts of the offense are, then it's typically -- I  
21 mean, I've excluded it for good reason. I think the  
22 particulars of it are more prejudicial than probative on the  
23 issue of his propensity for telling the truth, which is why it  
24 would come in. But if he opens the door, I'm going to allow  
25 them to walk through it.

1 All right. See you all tomorrow. Please be here at  
2 9:15. If anything comes up, let Joe know, so that I can come  
3 up early so that we can get the jury in the box by 9:30.

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